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Biennial Report to the Congress On Coastal Zone Management

Fiscal Years 1982 and 1983

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U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Ocean Service
Office of Ocean and Coastal Resource Management

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Fiscal Years 1982 and 1983

September 1984

U. S. DEPARTMENT OF COMMERCE

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Introduction

Section 316 of the Coastal Zone Management Act, as amended, requires that the Secretary of Commerce prepare and submit to the President for transmittal to the Congress a report summarizing the administration of the Act for each biennial period. The section further specifies 12 issues which are to be addressed in each report. This report covers the activities under the Act for Fiscal Years 1982 and 1983. Part I of the report addresses each of the issue areas listed in the statute. Part II contains a brief discussion of each coastal state which is eligible to participate in the Federal coastal program. The Appendix contains the Act with a sectional summary, and the regulations promulgated under the Act during this biennium.

Executive Summary

The Coastal Zone Management Act of 1972 (CZMA) authorized the first national program to promote the wise use and protection of coastal land and water resources. The CZMA provides funds, policy guidance, and technical assistance to coastal state and territorial governments to help them establish and maintain coastal zone management (CZM) programs that meet Federal objectives. CZMA amendments in 1976 and 1978 added the Coastal Energy Impact Program (CEIP) designed to assist states and territories financially in planning for and mitigating the impacts of offshore oil and gas development and other coastal energy activity. Section 315 of the Act established the National Estuarine Sanctuary Program to assist states in acquiring and managing estuarine areas as natural field laboratories for long-term research and educational opportunities.

The 1980 Amendments to the CZMA confirmed the basic structure of the CZM program and, in addition, identified nine national interest areas in which states are required to make improvements as part of their CZM programs:

- Protection of natural resources,
- Management of coastal development to avoid hazardous areas,
- Priority consideration given to coastal dependent uses and energy facility siting,
- Public shorefront access,
- Assistance in redevelopment of urban waterfronts and ports,
- Coordination and simplification of governmental procedures to ensure expedited governmental decisionmaking for management of coastal resources,
- Consultation and coordination with Federal agencies,
- Public participation in coastal decisionmaking, and
- Comprehensive planning, conservation, and management of living marine resources.

The CZMA is administered by the Office of Ocean and Coastal Resource Management (OCRM). OCRM, formerly the Office of Coastal Zone Management (OCZM), was created as part of a major reorganization of the National Oceanic and Atmospheric Administration (NOAA) in 1982. Located in the new National Ocean Service (NOS), one of the five main line components within NOAA, OCRM contains most of the components of its predecessor office with the exception of the Office of Resources Coordination and Assessment. OCRM retained NOAA-wide policy coordination responsibility for Outer Continental Shelf oil and gas development, and activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("Superfund"), and received responsibility in the reorganization for NOAA-wide policy coordination in coastal hazards and marine transportation. OCRM also has responsibility for implementing the National Marine Sanctuary Program, which

is authorized under Title III of the Marine Protection, Research and Sanctuaries Act of 1972; the Ocean Thermal Energy Conversion Act of 1980, which requires that a legal regime be established and maintained to both permit and encourage the development of a commercial ocean thermal energy conversion industry; and the Deep Seabed Hard Mineral Resources Act, which establishes a legal structure to encourage U.S. companies to explore for and commercially recover deep seabed hard minerals and thus provide the U.S. with a more stable source of strategic minerals. Further information on each of these programs can be found in their annual reports to Congress. The most recent of these are The National Marine Sanctuary Program, Report to Congress on Fiscal Years 1981-1982; Deep Seabed Mining, Report to Congress Fiscal Years 1982-1983; and, OTEC Report to Congress: FY 1983.

During the FY 1982-1983 biennium, two states met the requirements of the CZMA and received Federal approval of their coastal management programs--the Ocean and Harbor Segment of the New Hampshire Coastal Program and the New York Coastal Management Program. In addition, OCRM found that Virginia was making adequate progress in the development of its program consistent with the policies set forth in Section 303 of the CZMA and, therefore, eligible to receive CEIP funds. Three new sanctuaries were added to the National Estuarine Sanctuary system--Wells, Maine; Hudson River, New York; and three sites of the North Carolina Sanctuary system. Final regulations were published implementing the 1980 amendments to the CZMA, and OCRM continued its efforts to phase out Federal financial assistance to the states for implementing their programs. These and other activities under the CZMA are discussed in this report.

PART I

IMPLEMENTATION OF THE CZMA

316(a)(1) IDENTIFICATION OF THE STATE PROGRAMS APPROVED PURSUANT TO THIS TITLE DURING THE TWO PRECEDING FEDERAL FISCAL YEARS AND A DESCRIPTION OF THOSE PROGRAMS.

New Hampshire

The Ocean and Harbor Segment of the New Hampshire Coastal Program (NHCP) was approved in May 1982. This segment covers the Atlantic Ocean, the Hampton Estuary, and the Portsmouth Harbor portion of the New Hampshire coast. It includes all coastal waters to the seaward limits of State jurisdiction and all land along the State's Atlantic Ocean shoreline from the Massachusetts border to the Portsmouth/Newington town line, extending inland 1,000 feet or to the limits of the Wetlands Board jurisdiction over tidal waters, whichever is farther inland. The remaining management program, including all areas under tidal influence throughout the coast, especially the Great Bay area, is now under development.

The NHCP relies exclusively on existing State laws, policies and agency regulations which provide effective State management and coordination of critical coastal resources and significant impacts on coastal waters. These include the Fill and Dredge in Wetlands Act, the Water Supply and Pollution Control Law, the authorities of the Fish and Game Department over marine species, the Energy Facilities Siting Laws, the authority of the Department of Resources and Economic Development to manage State properties which cover 78 percent of the Atlantic shoreline, and the regulatory power of the State Port Authority. In addition to these core programs, there are over 60 State statutes which give 19 State agencies planning, development, and regulatory authority within the coastal areas. The lead agency is the Office of State Planning. Local government participation in the NHCP is voluntary.

The NHCP contains 17 coastal policies reflecting State priorities which provide consistent guidelines for coordinated State agency action in the seacoast, aimed at balancing development with resource protection. The main issues facing the NHCP are increasing the monitoring and enforcement of State authorities to protect coastal resources, enhancing the coordination of State programs, improving the management of State coastal properties, and increasing public participation and information.

New York

The New York Coastal Management Program (NYCMP) was approved in September 1982. The NYCMP encompasses three distinct coastal environments--the marine environment of Long Island and New York City; the tidal estuarine environment of the Hudson River; and the freshwater environment of the Great Lakes-St. Lawrence region. The area covered by the program includes all coastal waters within the State's territorial jurisdiction and adjacent shorelands containing uses which have a direct and significant impact on coastal waters. Generally, this inland boundary is approximately 1,000 feet from the shoreline and is extended to include all identified geographic areas of particular concern. In urbanized areas and other developed locations, the boundary is approximately 500 feet from the shoreline or less where a major roadway or railway line runs parallel to the shoreline.

The NYCMP contains 44 coastal policies concerning promoting the beneficial uses of coastal resources, preventing the impairment of those resources, and managing major activities substantially affecting coastal resources. The policies are implemented through a number of State regulatory and management authorities including the Waterfront Revitalization and Coastal Resources Act, which forms the basis for coordinating all State actions affecting the coastal area; the Coastal Erosion Hazards Act, which provides uniform setback requirements in coastal high hazard areas; and the Tidal Wetlands Act. The major issues facing the State are implementing the Coastal Erosion Hazards Act and working with local governments to develop waterfront revitalization plans.

316(a)(2) LISTING OF THE STATES PARTICIPATING IN THE PROVISIONS OF THIS TITLE AND A DESCRIPTION OF THE STATUS OF EACH STATE'S PROGRAMS AND ITS ACCOMPLISHMENTS DURING THE PRECEDING TWO FEDERAL FISCAL YEARS.

Table I depicts the program status of all coastal states eligible for participation in the Federal Coastal Zone Management Program. A discussion of each state's activities during FY 1982 and 1983 is found in Part II of this report--State Summaries.

Table 1

STATUS OF STATE COASTAL ZONE MANAGEMENT PROGRAMS

<u>State</u>	<u>Actual or Estimated Federal Approval Date By Fiscal Year (ends 9/30)</u>	<u>Comments and Status 10/31/83</u>
Washington	1976	Approved
Oregon	1977	Approved
California	1978	Approved
Massachusetts	1978	Approved
Wisconsin	1978	Approved
Rhode Island	1978	Approved
Michigan	1978	Approved
North Carolina	1978	Approved
Puerto Rico	1978	Approved
Hawaii	1978	Approved
Maine	1978	Approved
Maryland	1978	Approved
New Jersey	1978	Approved
(Bay and Ocean Shore Segment)		
Virgin Islands	1979	Approved
Alaska	1979	Approved
Guam	1979	Approved
Delaware	1979	Approved
Alabama	1979	Approved
South Carolina	1979	Approved
Louisiana	1980	Approved
Mississippi	1980	Approved
Connecticut	1980	Approved
Pennsylvania	1980	Approved
New Jersey	1980	Approved
(Remaining Section)		
Northern Marianas	1980	Approved
American Samoa	1980	Approved
Florida	1981	Approved
New Hampshire	1982	Approved
(Ocean and Harbor Segment)		
New York	1982	Approved
Virginia	1984	A preliminary draft of the Program Document will be submitted in early FY 1984
Ohio	Non-participating	
Indiana	"	
Georgia	"	
Minnesota	"	
Illinois	"	
Texas	"	

316(a)(3) AN ITEMIZATION OF THE ALLOCATION OF FUNDS TO THE VARIOUS COASTAL STATES AND A BREAKDOWN OF THE MAJOR PROJECTS AND AREAS ON WHICH THESE FUNDS WERE EXPENDED.

In 1981, the Administration proposed to phase-out Federal financial support for the CZM and CEIP programs beginning in 1982. The President's economic program was designed to reduce the Federal deficit, and CZM and CEIP were deemed sufficiently successful to be returned to the states. In response to the Administration's proposal, the Congress, as part of the FY 1982 Budget Reconciliation Act, reprogrammed \$33 million from the Coastal Energy Impact Fund (CEIF) to be made available to the states for final CZM grants and \$7 million for final CEIP grants. In FY 1983, Congress appropriated \$7 million for CZM, over half of which was for the newly approved states of New York and New Hampshire; the rest was to be utilized for states with "critical needs."

Table 2 shows the funds received by each of the coastal states for FY 1982 and FY 1983 as well as the total funds received by the states under Sections 305, 306, 308, and 315, since the passage of the CZMA. A description of how each state utilized its allocated funds is contained in Part II of this report--State Summaries.

Table 2

Funds Expended by States Under the CZMA by Section
(Dollars in thousands)

State	Section 306			Section 308			Section 315			Total**	
	1974-1981*	1982	1983	1974-1981	1982	1983	1974-1981	1982	1983	1974-1983	1974-1983
Alabama	\$ 2,862	\$ 779	0	\$ 3,899 ¹	\$ 15	\$ 220	\$ 0	\$ 25	0	\$ 7,8	
Alaska	17,410	3,000	0	57,949 ²	1,616	74	0	0	0	80,0	
American Samoa	1,439	614	0	151	0	75	0	0	0	2,27	
California	19,949	3,000	0	8,297 ³	647	0	2,592	700	450	35,6	
Connecticut	4,557	1,037	0	1,674	79	16	0	0	0	7,36	
Delaware	3,728	762	200	1,488	165	167	0	0	0	6,51	
Florida	5,742	3,000	0	3,474	317	593	3,738	0	73	16,93	
Georgia	1,857	0	0	1,357 ⁴	0	0	1,697	54	0	4,9	
Guam	2,063	621	300	268	0	75	0	0	0	3,32	
Hawaii	5,319	720	200	312	0	0	70	0	170	6,79	
Illinois	1,709	0	0	0	0	0	0	0	0	1,70	
Indiana	1,365	0	0	381	0	0	0	0	0	1,74	
Louisiana	6,782	2,574	0	76,970 ⁵	1,300	1,577	0	0	0	89,2	
Maine	6,896	1,031	0	1,984	109	0	0	580	200	10,80	
Maryland	7,989	1,299	0	1,735	166	406	618	50	0	12,41	
Massachusetts	8,620	966	0	4,758 ⁶	0	140	28	0	0	14,5	
New Jersey	7,075	2,094	0	3,418	673	267	50	0	0	13,57	
New York	4,955	3,000	3,000	1,903	426	411	50	375	14	14,13	

State	Section 306			Section 308			Section 315			Total**
	1974-1981*	1982	1983	1974-1981	1982	1983	1974-1981	1982	1983	
North Carolina	8,513	1,020	250	1,789	0	170	0	454	1,313	13,50
Northern Marinas	1,418	628	0	233	0	75	0	0	0	2,35
Ohio	1,672	0	0	805	0	0	240	29	62	2,80
Oregon	8,656	1,231	0	1,129	565	85	2,025	0	0	13,69
Pennsylvania	3,562	1,048	0	730	754	95	0	0	0	6,18
Puerto Rico	6,661	955	0	118	0	75	400	150	50	8,43
Rhode Island	5,591	617	140	2,187	0	108	607	213	10	9,47
South Carolina	5,367	1,278	0	1,650	180	250	0	162	0	8,88
Texas	4,183	0	0	34,556 ⁸	0	0	0	0	0	38,7
Virgin Islands	2,140	635	350	174	112	0	0	0	0	3,41
Virginia	2,234	0	0	159	0	414	0	0	0	2,83
Washington	\$11,148	\$1,251	0	\$ 2,167	\$ 186	\$ 0	\$1,163	\$ 50	50	\$16,01
Wisconsin	6,826	803	350	448	168	53	0	24	0	8,67

* Includes Section 305 program planning funds

** Includes all Federal funding awarded since 1974 through FY 1983; Sections 305, 306, 308, 309, 310, and 315.
(Marine Sanctuary funding is not included.)

1. Includes \$1,965,000 in loans.
2. Includes \$50,182,000 in loans.
3. Includes \$1,850,000 in loans.
4. Includes \$1,200,000 in loans.
5. Includes \$32,110,000 in loans.
6. Includes \$2,503,000 in loans.
7. Includes \$13,295,000 in loans.
8. Includes \$24,843,000 in loans.

316(a)(4) AN IDENTIFICATION OF ANY STATE PROGRAMS WHICH HAVE BEEN REVIEWED AND DISAPPROVED AND A STATEMENT OF THE REASONS FOR SUCH ACTION.

No state programs were disapproved during FY 1982-1983.

316(a)(5) A SUMMARY OF EVALUATION FINDINGS PREPARED IN ACCORDANCE WITH SUBSECTION (a) OF SECTION 312, AND A DESCRIPTION OF ANY SANCTIONS IMPOSED UNDER SUBSECTIONS (c) AND (d) OF THIS SECTION.

Evaluation Procedures

The states and programs evaluated during FY 1982-1983 are shown in Table 3. During FY 1982, each state receiving a new award under Section 306 was evaluated prior to the receipt of funds (25 states). In most instances, the awards were for more than one year and were designed to spread final Federal funding over an extended period as the state contribution to the maintenance of the coastal programs increased. Because of the multi-year work programs in the awards, Section 306 programs were not all evaluated again in FY 1983. Instead, OCRM focused the evaluations on those states which would be receiving a new award, those in which problems existed which warranted a yearly review, or those which had received less than two evaluations. In addition to the evaluation of Section 306 programs (16 of 28 approved states), OCRM evaluated 12 CEIP (Section 308) programs and six estuarine sanctuary (Section 315) programs for the first time.

OCRM modified and improved its evaluation procedures during this biennium. OCRM staff increased efforts to contact and solicit the views of users of the coast to assess the impact of the state programs, particularly their permitting processes, on the private sector and the general public. OCRM solicited the views of developers, including builders and contractors, port interests, oil companies, fishermen, boaters, state associations of municipalities and of county supervisors, and representatives of environmental groups. OCRM adopted procedures to improve the timeliness of evaluation reports, including transmitting preliminary recommendations to the state within three weeks of the site visit, and shortening the Findings by focusing only on accomplishments most significantly supporting the national objectives identified in Section 303(A) through (I) of the CZMA.

Inspector General's Report

In August 1983, the Department of Commerce's Office of Inspector General issued a report entitled "Opportunities to Improve Federal Oversight Responsibilities of States' Coastal Zone Management Programs to Assure More Effective Results." The report recommended (1) strengthening the evaluation system that assesses the effectiveness, including cost effectiveness, of state programs; (2) establishing a policy regarding financial assistance for significant improvements which would avoid funding existing basic program elements, and would support new or expanded program elements and activities; (3) improving the timeliness of evaluation reports and developing a problem-oriented evaluation schedule; and (4) encouraging states to identify and designate coastal resources of national significance and to establish criteria for their protection as provided in Section 306(i) of the CZMA.

The existing evaluation process and the procedural changes discussed above substantially address the third recommendation. In response to the first recommendation, OCRM has increased its review of the cost-effectiveness of state activities, focusing on innovative techniques for addressing coastal issues and the cost-effectiveness of projects approved for funding under the CZMA. The review of successful cost-effective resource management techniques,

Table 3

Evaluations (FY1982-FY1983)

	FY 1982 Section 306	Section 306	FY 1983 Section 308	Section 315
Alabama	†			
Alaska	†	†	†	
American Samoa	†			
California	†	†	†	
Connecticut	†			
Delaware	†			
Florida	†	†		
Georgia				†
Guam	†			
Hawaii	†			
Illinois				
Indiana			†	
Louisiana	†	†	†	
Maine	†			
Maryland	†	†	†	†
Massachusetts	†			
Michigan	†			
Minnesota				
Mississippi	†		†	
New Hampshire		†		
New Jersey	†			
New York		†		
North Carolina	†			
Northern Marianas	†			
Ohio			†	†
Oregon	†	†	†	†
Pennsylvania	†			
Puerto Rico	†	†	†	†
Rhode Island	†	†	†	†
South Carolina	†			
Texas			†	
Virgin Islands		†		
Virginia				
Washington	†	†	†	
Wisconsin	†			

such as joint permitting and/or enforcement with other state and Federal agencies and leveraging matching funds for projects, is a standard part of all evaluations. The report criticized funding certain projects as significant improvements, contending the activities were part of the basic program. (This is discussed further in Section 316(a)(9) of this report). The current regulations implementing the significant improvement provisions of the CZMA provide the states and the Federal office with a flexible but effective process for improving the management of coastal resources under a variety of circumstances. However, proposed significant improvement projects are receiving close scrutiny in light of the recommendation.

The report recommended implementation of Section 306(i) of the CZMA, i.e. identification, designation and protection of coastal resources of national significance. During the development phase under Section 305, all the states were required to inventory their coastal resources and develop a procedure for designating Geographic Areas of Particular Concern and Areas for Preservation or Restoration. In addition, several states have used funds under Section 306 to continue this process. Therefore, much of the information to fulfill the requirements of Section 306(i) already exists in various forms in the states and, in most cases, these resources are receiving special protection under the approved coastal management program. OCRM is considering an effort to document the status of information needed to fulfill the requirements of this section.

Summary of Evaluation Findings

A synopsis of the evaluation findings for each state during FY1982-1983 can be found in Part II of this report--State Summaries. From the review of these results, several trends in state activities can be found.

During the period of phase down of Federal funds, the states have modified the structure of their staffs and emphasized the maintenance of a strong core program. Changes have included reducing the number of staff, transferring staff to other funding sources, and requiring individual staff members to diversify their areas of responsibility. Resources have been directed toward basic program functions such as permitting, monitoring and enforcement, and coordinating and consolidating agency activities. States have not concentrated on expanding state capabilities and initiating innovative programs. However, where the states have focused their resources on significant coastal problems, their efforts achieve state-of-the-art results. North Carolina's and Florida's work in coastal hazards and hurricane evacuation, Oregon's mitigation banking activities, and Massachusetts' management of wetlands provide prime examples.

Despite some areas of conflict, relationships between the states and the Federal agencies continue to improve. In part this progress resulted from greater state attention as programs evolved from the development into the implementation phase. The recognition of common goals and the need to simplify government processes also contributed to this trend. Finally, the expertise which several of the states developed in coastal problems, such as those mentioned above, encouraged the Federal agencies to look to the states for advice.

316(a)(6) A LISTING OF ALL ACTIVITIES AND PROJECTS WHICH, PURSUANT TO THE PROVISIONS OF SUBSECTION (c) OR SUBSECTION (d) OF SECTION 307, ARE NOT CONSISTENT WITH AN APPLICABLE APPROVED STATE MANAGEMENT PROGRAM.

The Federal consistency provisions of the Coastal Zone Management Act (CZMA) received increasing attention during the early 1980's from the states, Federal agencies, industry and the public. As state coastal zone management programs evolved from program development and early implementation stages to a mature program administrative stage, states have become more concerned about the consistency of a broad range of Federal programs and projects with their federally-approved state coastal management programs. Federal agencies also have been developing the institutional mechanisms to assure early coordination with state coastal management agencies and to develop projects which are consistent with state coastal programs. Industry groups, particularly the oil and gas industry, have monitored closely state implementation of the Federal consistency provisions and have, in some cases, participated actively in OCRM's evaluation of state programs under Section 312 of the CZMA. Citizens groups also have scrutinized the Federal consistency process and, in a number of cases, have joined with state and local governments to bring consistency cases to judicial review.

Federal consistency provides intergovernmental coordination and consultation mechanisms to avoid and resolve conflicts in the vast majority of situations. A great many projects are found consistent or, after appropriate intergovernmental coordination, can be made consistent through the application of conditions or mitigation measures. An OCRM review of Federal consistency actions conducted during 1982 indicated that the states reviewed approximately 300 direct Federal actions under Section 307(c)(1) of the CZMA with non-concurrences in about three percent of the cases; approximately 6500 to 7500 Federally licensed and permitted activities under Section 307(c)(3)(A) with non-concurrences in about two percent of the cases; approximately 500 Federally licensed and permitted activities described in detail in OCS plans under Section 307(c)(3)(B) with non-concurrences in about 0.5 percent of the cases; and approximately 600 Federal assistance proposals to state and local governments under Section 307(d) with non-concurrences in about 0.5 percent of the cases. (Note: These numbers are approximate and only describe the general ratio of concurrences to non-concurrences. Precise data was unavailable in a few cases. Also, differences in state administrative procedures result in figures which are not completely comparable. For example, in reviewing Federal licenses and permits, some states work with applicants to develop conditions which allow state concurrence. Other states will first issue a non-concurrence on a Federal license or permit and then notify an applicant of the conditions under which the project would be consistent.)

Although state and Federal agencies have been able usually to resolve their differences, consistency has been the subject of litigation. In 1983, state and local governments filed lawsuits regarding the consistency of Outer Continental Shelf (OCS) oil and gas lease sales (Sale 52 - North Atlantic; Sale 70 - St. George Basin; Sale 73 - Central and Northern California; and Sale 76 - Mid-Atlantic). Also in 1983, the State of Florida sued the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS) claiming inconsistencies between the Florida Coastal Management

Program and fisheries management plans developed under the Magnuson Fisheries Conservation and Management Act for mackerel and the snapper-grouper fisheries complex.

SIGNIFICANT USES OF THE FEDERAL CONSISTENCY PROVISIONS

Significant state-specific issues are discussed in Part II of this Biennial Report. The following discussion highlights national issues and trends in the implementation of the Federal consistency provisions of the CZMA.

Sections 307(c)(1) and (2)

Sections 307(c)(1) and (2) of the CZMA require all Federal activities, including development projects, which directly affect the coastal zone to be consistent to the maximum extent practicable with federally-approved state coastal management programs. NOAA regulations define all Federal development projects within the coastal zone as "directly affecting" the coastal zone and direct Federal agencies to review other activities on a case-by-case basis to determine whether they "directly affect" the coastal zone (15 CFR 930.33). NOAA regulations at 15 CFR 930.32 define "maximum extent practicable" to mean fully consistent unless prohibited by the laws and regulations which govern a Federal agency's activities.

The Supreme Court's decision in Secretary of the Interior et al. v. California et al., 104 S. Ct. 656, 52 U.S.L.W. 4063, (U.S. Slip Op. No. 82-1326), held that the Section 307(c)(1) provisions do not apply to OCS oil and gas lease sales. (See the Final Note to this section on consistency for a review of the January 1984 U.S. Supreme Court decision in this matter.) Prior to the Supreme Court's decision, the states had focused their consistency review of OCS lease sales on such concerns as sale timing, leasing of particularly sensitive areas, and oil and gas transportation methods. Each state's objection to a consistency determination for an OCS lease sale included conditions or alternatives which would allow the sale to proceed in a manner consistent with the state's coastal management program. These alternatives generally involved deletion of specific tracts from the sale, commitment to conduct or complete certain environmental studies and impact analyses, establishment of monitoring programs or biological task forces, and additional stipulations or information to lessees in the Final Notice of Sale.

OCS lease sales were not the only Federal activities to be the subject of intensive Federal consistency review during the early 1980's. NOAA has been particularly concerned with the interaction between the CZMA and the Magnuson Fisheries Conservation and Management Act (MFCMA), under which the eight Regional Fishery Management Councils, subject to the approval of the Secretary of Commerce, manage fisheries resources in the 200 mile Fishery Conservation Zone (FCZ). A significant controversy arose between Florida and the National Marine Fisheries Service (NMFS), which administers the MFCMA for the Secretary of Commerce, over the adoption of Federal fisheries management plans and implementing regulations for several fisheries, including the mackerel and the snapper-grouper complex, which permitted the use of fishing gear expressly prohibited in State waters by the federally-approved Florida coastal zone management program. NMFS determined that the national standards of the MFCMA precluded the prohibition in the FCZ of these gear types,

specifically purse seine, fish traps, and powerheads. Therefore, NMFS concluded that these fisheries management plans were consistent to the "maximum extent practicable" with Florida's coastal program. The Florida Department of Environmental Regulation disagreed and subsequently sued the Secretary of Commerce. This litigation is currently pending.

To clarify the interrelationships between the MFCMA and the CZMA, the NOAA Administrator issued Administrator's Letter No. 37 in November 1982. In the Letter, the Administrator confirmed long-standing agency policy that these two laws are fundamentally compatible and should be administered in a manner to give maximum effect to both laws. The Administrator's Letter advises that a case-by-case review of specific fisheries management plans (FMP's) is necessary to determine whether they "directly affect" the coastal zone within the meaning of Section 307(c)(1). The NOAA Administrator's Letter states that FMP's must be conducted in a manner consistent to the maximum extent practicable with approved coastal management programs. The Letter advises that FMP's need not contain policies identical to the state coastal program, and that differing policies are consistent as long as the effect on the state's fishery resource is the same. The Administrator's Letter is under review in the light of the Supreme Court decision in Secretary of the Interior v. California.

States and Federal agencies participated in a broad range of Federal consistency reviews during the early 1980's. Although major state activities are discussed in Part II of this report, the following sample listing indicates the broad range of reviews.

- Environmental Protection Agency - Designation of an ocean disposal site off Tampa Bay.
- Federal Railway Administration - Bridge repair and enhancement affecting public beach access in Connecticut.
- Corps of Engineers - Dredging in the Hudson River within the Port of Albany, New York. Reconstitution and sealing of the West Jetty, Santa Cruz Harbor, California. Dredging of the Camp Pendleton-Oceanside Harbor, California.
- General Services Administration - Disposal of Federally owned surplus land at the Montauk Air Force Station, New York, and at the Honolulu Airport. Disposal of surplus land at the Hamilton Air Force Base, San Francisco Bay.
- National Park Service - Management plan for The War in the Pacific National Historical Park, Guam. Dredging and channelizing of Redwood Creek Estuary, California.
- Navy - Proposed disposal of decommissioned, defueled nuclear submarines off the coast of California. Development of an operational base for the Landing Craft Air Cushion Vehicles at Camp Pendleton, California. Construction of seaside residences and parking facilities at the Naval Submarine Base in San Diego County.

- ° Bureau of Land Management - Oil and gas lease sale in the National Petroleum Reserve, Alaska. Timber management plans for Oregon's South Coast-Curry and Eugene regions.
- ° Coast Guard - Redesignation of Big Stone Anchorage, Delaware Bay, to allow coal transshipment. Proposed anchorage in Pensacola Bay, Florida, for mothballed military vessels.
- ° Forest Service - Oil and gas leasing in Los Padres National Forest, California.

Section 307(c)(3)(A)

Federal licenses and permits are also subject to Federal consistency review. Section 307(c)(3)(A) of the CZMA provides that no Federal license or permit shall be granted by a Federal agency to an applicant for an activity affecting land or water uses in the coastal zone until the coastal state concurs, or is conclusively presumed to concur, that the activity is consistent with the federally-supported state coastal management program. Although projects requiring Corps of Engineers permits for dredging and filling constitute the most numerous set of activities subject to the requirement of Section 307(c)(3)(A), other Federal licenses and permits have come increasingly to the attention of state coastal management agencies. Examples include the Environmental Protection Agency's (EPA) waivers under Section 301(h) of the Clean Water Act and EPA's National Pollution Discharge Elimination System (NPDES) permits, the Interstate Commerce Commission's certifications for railroad abandonment, and the Department of the Interior's permits for seismic surveys and geological and geophysical exploration both onshore and in the OCS.

In July 1983, the Corps of Engineers requested state general concurrences from all states and territories with approved programs for 27 nationwide permits. The Corps proposed nationwide permits for activities ranging from bank stabilization and minor fills to structures for OCS oil and gas production. The six-month Federal consistency review period ended on January 1, 1984. The unusual general review of nationwide permits involved the active participation of state coastal zone management staffs and numerous Corps of Engineers District offices. As a result, a large number of states were able to develop regional conditions which allowed a general concurrence in a majority of the nationwide permits.

Most states supported the Corps' objective of simplifying the regulatory system and reducing burdens on applicants, but a number of states raised concerns over specific proposed permits. In general, state concerns focused on assuring that projects with significant impacts did not "fall through the cracks" in the state and Federal permit systems, that special regional conditions were accommodated, and that adequate monitoring and enforcement systems were in place.

Section 307(c)(3)(B)

The CZMA at Section 307(c)(3)(B) generally prohibits Federal agencies from granting any license or permit for any activity which affects any land or water use in the coastal zone and is described in detail in plans for the exploration or development and production of oil and gas resources from the OCS unless consistent with the federally-approved state coastal zone management plans.

With the quickening pace of OCS development during the early 1980's, those states near OCS frontier areas have become increasingly involved in the review of the OCS Plans of Exploration (POE's) and Development and Production Plans (DPP's) required of oil companies by the OCSLA. For example, as of November 1983, the California Coastal Commission had reviewed 75 POE's and 5 DPP's. Concurrences were given to 72 of the 75 POE's and 4 of the 5 DPP's (the fifth DPP for the Exxon Santa Ynez Unit was partially disapproved, partially approved and the remainder of this DPP was withdrawn). Of the three objections to POE's, two cases have been appealed to the Secretary of Commerce (see Secretarial Appeals section) and the remaining objection was changed to a concurrence after the applicant made a number of commitments to mitigating measures. The only DPP to receive a Coastal Commission objection was Exxon's DPP for the Santa Ynez Unit (see Secretarial Appeals Section).

Section 307(d)

Section 307(d) of the CZMA requires that Federal assistance to state and local governments for projects affecting the coastal zone can be awarded only if such projects are consistent with the state coastal zone management programs. The Federal agency most affected by this requirement is the Department of Housing and Urban Development (HUD) which administers the Urban Development Action Grants and the Community Development Block Grants. Generally, the administration of Section 307(d) has been non-controversial. During 1982 and 1983, state and Federal governments worked primarily to reduce total project review time and to maximize the effectiveness of the consistency review process. The most challenging activities relating to Section 307(d) have been the efforts of state and Federal governments to make the adjustments necessitated by the replacement of OMB Circular A-95 by E. O. 12372. Prior to 1983, the clearinghouse system established by OMB circular A-95 was the prime vehicle for consistency review of Federal assistance activities. The Executive Order removed Federal funding for the clearinghouse system established under A-95 and instead gave the states the opportunity to design and develop their own systems to review Federal projects. As a result, these individual state "intergovernmental review processes" have required HUD to respond with flexibility to meet the requirements of each state as individual State intergovernmental review processes are developed.

Secretarial Appeals

The CZMA empowers the Secretary of Commerce to override a state's consistency objection to the issuance of a Federal license or permit if the Secretary finds that the activity is consistent with the purposes of the CZMA, or is necessary in the interest of national security (see 15 CFR 930 Subpart H). Prior to 1982, only two appeals had been filed and both were withdrawn voluntarily prior to any formal proceedings. Between December 1982 and December 1983, five appeals were filed. Private developers in North Carolina filed two appeals -- one proposing a marina and the other requesting an "after-the-fact" wetlands fill permit. The remaining three appeals were filed by oil companies over objections by the California Coastal Commission to OCS oil and gas exploration, development, and production.

On December 17, 1982, Union Oil Company of California appealed the Coastal Commission's objection to its Plan of Exploration (POE) for OCS Parcel-0203. The lease tract is located within the boundaries of the Santa Barbara Channel Islands National Marine Sanctuary and the proposed exploration wells are within the buffer zone of the northbound shipping lanes. Union acquired this lease tract prior to establishment of the Marine Sanctuary and, therefore, the Sanctuary regulations do not restrict activities on the lease (see 15 CFR 935.6). In November 1981, the California Coastal Commission concluded that the project posed too great a risk to sensitive resources and to the endangered California brown pelican and, therefore, objected to Union's POE. After the filing of the appeal, Union and the Commission staff engaged in lengthy discussions and negotiations. As a result of these discussions, Union withdrew its appeal and re-submitted the POE for consistency review. The revised POE included a number of new commitments. For example, Union pledged to dispose of drilling muds and cuttings outside the Sanctuary, to drill for the briefest possible period during the winter months in order to minimize the risk to pelican breeding, and to develop the field from a platform outside the boundary of the Marine Sanctuary. Although the Commission found Union's mitigation efforts laudable, the Commission nevertheless found that these efforts could not rectify the risk associated with the project's close proximity to an extremely vulnerable and sensitive habitat, and that the mitigation efforts did not provide acceptable assurances. The Commission objected to Union's POE again in November 1983, and Union appealed this decision to the Secretary of Commerce. This appeal is currently under review.

In July 1983, Exxon Company, U.S.A. (Exxon) appealed an objection by the California Coastal Commission to Exxon's certification that Option A (Offshore Oil Treating) of its Outer Continental Shelf Oil and Gas Development and Production Plan for the Santa Ynez Unit in the Santa Barbara Channel is inconsistent with the California Coastal Management Program. Exxon is the operator for the development of crude oil and gas reserves in the 19 leases on the Santa Ynez Unit on the Federal Outer Continental Shelf (OCS) in the Santa Barbara Channel. Production from the Santa Ynez Unit was initiated on April 1, 1981, from the existing Hondo A platform. In order to recover additional reserves from the Hondo field and to develop two nearby fields, Exxon proposed the installation of three to four new platforms, an offshore oil and gas pipeline system connecting all of the platforms, and two oil and gas production and treating options (offshore oil treatment, onshore gas treatment - Option A; onshore oil and gas treatment - Option B). Crude oil transportation, under the offshore oil treatment option, would be by marine vessel from the existing Offshore Storage and Treating (OS&T) vessel to refineries in the Gulf of Mexico area. Crude oil transportation, under the onshore option, would be by marine vessels from a modernized nearshore marine terminal. Exxon estimated that primary recovery by the proposed development would be approximately 300 to 400 million barrels of crude oil and 600 to 700 billion standard cubic feet of natural gas over a period of 25 to 35 years. The California Coastal Commission rejected Exxon's Option A for offshore storage and treatment of the produced oil and transfer of the oil to tankers for shipment to refineries and for the construction of platforms and pipelines under that option. The Commission concurred with the offshore production portion of Exxon's Development and Production Plan, Option B (i.e., the platforms and pipeline gathering system). Exxon agreed to withdraw its consistency certification for the associated onshore facilities under Option B, including oil and gas treatment facilities, a marine terminal, and

pipelines in State waters, until Exxon resolves the pipeline feasibility or transportation issue in the local permitting process with Santa Barbara County. (Update: In February 1984, the Secretary of Commerce made partial findings supported by the record in the appeal and decided to stay the consideration of Exxon's appeal pending completion of the environmental review and state/local decisionmaking process on the onshore facilities associated with Option B.)

In August 1983, Exxon filed another appeal from a consistency objection by the California Coastal Commission. In this case the Commission had objected to Exxon's POE for drilling three wells on OCS-P-0467 in the Santa Barbara Channel. The Commission found the POE inconsistent primarily because Exxon had not been able to commit to restricting the exploratory drilling to a "window" during the winter months. The Commission believed that the restriction was necessary to minimize potential conflicts with the commercial thresher shark fishing industry. Exxon and the Commission staff participated in informal negotiations facilitated by OCRM which resulted in an agreement allowing Exxon to drill the first exploratory well during the winter of 1983-1984. Exxon withdrew its appeal and submitted a revised consistency certification. (Update: In February 1984, the Coastal Commission objected to Exxon's consistency certification for the second well, again due to the lack of a commitment to drill only during the winter months. Exxon had agreed not to pursue a third well, but appealed the Commission's objection to the Secretary of Commerce on March 9, 1984.)

Secretarial Mediation

The CZMA establishes, in Section 307(h), a voluntary mediation procedure whereby a state or Federal agency which is a party to a consistency dispute over a direct Federal activity (Sec. 307(c)(1)), can request the Secretary of Commerce to mediate disagreements. The only time the procedure was utilized was in 1979 in a dispute between California and the Department of Interior over whether OCS Lease Sale 48 "directly affected" the coastal zone and must be consistent with California's coastal zone management program. The mediation was unsuccessful in achieving any agreement between the parties.

Although the mediation procedures offer a dispute resolution mechanism short of litigation, Federal agencies have regularly declined to participate when mediation has been requested by the states. During 1983, the Secretary of Commerce received five requests for mediation. The Department of the Interior declined to participate in mediation requested by New Jersey over the consistency of OCS Lease Sale 76 and by California over the consistency of OCS Lease Sale 73. In declining the New Jersey request, Interior stated that the consultation mechanism provided by Section 19 of the Outer Continental Shelf Lands Act (OCSLA) would provide a more effective and expeditious means to resolve differences. The California Coastal Commission also requested Secretarial mediation of a dispute with the Interstate Commerce Commission (ICC) regarding an application by the Santa Fe Railroad Company to the ICC for abandonment of a railroad line in Los Angeles County. The ICC declined, stating that although the applicability of the CZMA to ICC railroad abandonment proceedings was "not free from doubt," the ICC considered the Coastal Commission's recommendations to the maximum extent possible under the statutes governing railroad abandonments. The National Marine Fisheries Service (NMFS) declined to participate in the mediation requested by Florida over disputes regarding the consistency of two fishery management plans. NMFS

determined that no useful purpose could be served by mediation because any further accommodations to meet Florida's requests would not be possible under the Magnuson Fisheries Conservation and Management Act.

FINAL NOTE:

The U.S. Supreme Court Decision in Secretary of the Interior
et al. v. California et al.

On January 11, 1984, the United States Supreme Court decided Secretary of the Interior et al. v. California et al., 104 S. Ct. 656, 52 U.S.L.W. 4063, (U. S. Slip. Op. No. 82-1326.) In a five-to-four decision, the Court held that the sale of Outer Continental Shelf (OCS) oil and gas leases is not an activity "directly affecting" the coastal zone within the meaning of Section 307(c)(1) of the CZMA, and, therefore, that a consistency determination is not required under that section. Section 307(c)(1) requires that Federal agencies conducting or supporting activities "directly affecting the coastal zone" must conduct or support those activities in a manner which is consistent to the maximum extent practicable with federally-approved state coastal management programs. The Court's ruling reversed the decision by the United States Ninth Circuit Court of Appeals holding that OCS lease sales are subject to the consistency provisions of the CZMA. The Coastal States Organization, and the states of Alaska, Florida and New Jersey filed amici curiae briefs in support of California. The Western Oil and Gas Association intervened on behalf of the appellants.

The Court interpreted the phrase "directly affecting" and concluded that Congress used the phrase to strike a balance between two different definitions of the "coastal zone" contained in Senate and House versions of the 1972 Act. In the Senate version, Federal lands were excluded from the "coastal zone;" in the House version, Federal lands were included in the "coastal zone." In both bills a state's consistency review authority extended only to Federal activities "in" the coastal zone. Thus, the Court reasoned that, according to the House version, Federal activities conducted on Federal lands were subject to consistency review; whereas, according to the Senate version, Federal activities on Federal lands were exempt from a state's consistency review. The Court concluded that the 1972 conference committee on the CZMA compromised these different provisions by accepting both the Senate's definition of "coastal zone" excluding Federal lands and the House's extension of a state's consistency review authority to cover Federal activities on Federal lands. Further, the Court held, based on its analysis of the legislative history, "that the 1972 Congress did not intend Section 307(c)(1) to reach OCS lease sales."

Writing for the dissenters, Justice Stevens argued that the "plain language" of Section 307(c)(1) "applies to activities that take place outside the zone itself as well as to the activities conducted within the zone." In the dissenters' view, the 1972 conferees' substitution of the phrase "directly affecting the coastal zone" for the narrow phrase "in the coastal zone" clarified Congress' intention, expressed in both the 1972 House and Senate versions of the CZMA, "to prevent adverse effects on the coastal zone."

The majority decision does not address the meaning of the statutory language in Section 307(c)(1) requiring that Federal agencies carry out activities directly affecting the coastal zone in a manner which is consistent with state programs "to the maximum extent practicable." Also, the Court's decision does not reach the issue of standing of environmental groups and local governments under the Administrative Procedure Act to bring an action to enforce Section 307(c)(1).

316(a)(7) A SUMMARY OF THE REGULATIONS ISSUED BY THE SECRETARY OR
IN EFFECT DURING THE PRECEDING FEDERAL FISCAL YEAR.

Several regulatory actions were taken during the biennium. In January 1982, NOAA withdrew regulations for Section 307(c)(1) of the CZMA which define the term "directly affecting the coastal zone". In May 1982, regulations were promulgated to implement the 1980 amendments to the CZMA for Sections 303/306(a), 306(b), 308, and 312. Proposed revised regulations for implementing the National Estuarine Sanctuary Program, Section 315, were published in August 1983, and are in the process of being finalized. Also in August 1983, a petition to issue regulations to implement Section 312(b) was received by NOAA (and later denied). These actions are described below.

Section 303/306(a) - The Coastal Zone Management Improvement Act of 1980 amended Section 303 of the CZMA by making Congressional Policy more specific through the identification of nine national coastal management objectives. Section 306(a) was also amended to require that each coastal state, which had been receiving Section 306 implementation funds for at least a year, expend an increasing proportion of its Federal funds (up to 30 percent) on activities which would result in significant improvements being made in these nine identified areas.

The regulations adopted pursuant to these amendments define "significant improvements" as activities which substantially strengthen the approved program or substantially strengthen the ability of the state to implement or enforce its approved program. They describe the procedures used to identify which activities would be significant improvements and set the first mandatory contribution to these objectives as 20 percent of the second Section 306 implementation award. Failure to agree to pursue significant improvements would result in the state losing its eligibility for future funds.

Section 306(b) - The revised regulations pursuant to this Section simplify the allocation formula for implementation funds under Section 306. The revised formula is based on: (1) a minimum share to each state, established by the Assistant Administrator; (2) 60 percent of the remaining appropriated funds to be allocated based on length of shoreline; and (3) 40 percent of the remaining appropriated funds based on the coastal county population. The regulations also authorize the Assistant Administrator to adjust the base level allocations as necessary to implement a phase down of Federal financial support under the Act.

Section 307(c)(1) - In May 1981, NOAA proposed rules and, in July 1981, published final regulations to clarify which Federal activities "directly affect the coastal zone" and, therefore, are subject to consistency review under this section of the CZMA. The rulemaking was extremely controversial. Following publication of final rules, additional comments of concern were received from state governments and Members of Congress. In addition, Congressional resolutions expressing disapproval of the final regulations were introduced. In October 1981, NOAA proposed to withdraw the July regulations and suspend their effective date. After reviewing the comments received on this proposal, NOAA withdrew the regulations on January 29, 1982, and it became effective 60 days later. For additional information on Federal consistency issues, refer to the previous Section 316(a)(6), Part I.

Section 308 - New Section 308(c)(3) authorizes grants for preventing or mitigating unavoidable environmental impacts resulting from coal transportation, storage, or transfer and alternative ocean energy activities. The final regulations implementing Section 308(c)(3) were combined with existing regulations implementing Sections 308(c)(1) and (2) and replace Subpart D (Planning for the Consequences of Energy Facilities) and Subpart L (OCS State Participation Grants) of 15 CFR 931--the Coastal Energy Impact Program regulations. The final regulations, therefore, govern the award of all grants under Section 308(c). Consolidation of the three categories of "c" grants under one subpart has greatly simplified the regulations for administering the CEIP. Under this consolidated approach, states received one allotment under Section 308(c) that was apportioned at their discretion among the allowable uses of Subsections (c)(1), (c)(2) and (c)(3).

Section 312 - Section 312 requires a "continuing review of the performance of coastal states with respect to coastal management". This review must include a written evaluation that assesses the extent to which the state has: (1) implemented and enforced its approved program; (2) addressed the coastal management needs identified in Section 303(2)(A)-(I) of the CZMA; and (3) adhered to the terms of any grant, loan, or cooperative agreement funded under the CZMA. The section describes the penalty a state may suffer for failure to make significant improvements in achieving the coastal management objectives mentioned above, and the conditions accompanying any proposal to withdraw Federal approval and financial assistance from a participating state.

The regulations adopted pursuant to this section established the procedures for conducting the evaluations, the scope of activities to be covered by the evaluation, and the procedures for assessing adherence to the federally-approved program. The role of public participation in the continuing review is discussed, and the procedures for reducing financial assistance for failure to make significant improvements and withdrawing program approval and financial assistance are specified.

Section 312(b) - A petition was received from Friends of the Earth and other supporting environmental groups contending that NOAA's regulations concerning public participation in evaluations of state programs under Section 312(b) were inadequate and that OCRM should undertake further rulemaking. The regulations require that an Advance Notice of Intent to Evaluate be published in the Federal Register at least 45 days before the site visit, that public meetings be held during each evaluation, and that evaluation findings be prepared, noticed in the Federal Register, and distributed. In September 1983, NOAA published the petition in the Federal Register and invited comments for 30 days. After reviewing the comments, NOAA denied the petition on the grounds that its rules are sufficient and fulfill the intent of the Act. A notice of NOAA's decision was published in the Federal Register on December 15, 1983.

Section 315 - NOAA proposed to revise the regulations implementing the National Estuarine Sanctuary Program. The proposed regulations revise existing procedures for selecting and designating national estuarine sanctuaries and provide guidance for their long-term management. Site identification and selection will be based on a revised biogeographic classification scheme and typology of estuarine areas. The regulations place a greater emphasis on

management planning by individual states early in the process of evaluating a potential site. The regulations also reflect a progression from the initial identification of a site, through the designation process, and continued management of the sanctuary by the state after Federal financial assistance has ended. In addition, the regulations provide for a programmatic evaluation of sanctuary performance. The regulations also clarify the financial assistance application and award process.

List of Current Regulations

- 15 CFR 920 - CZM Program Development Grants
Section 305, issued in 1977, superseded by Part 923
- 15 CFR 921 - National Estuarine Sanctuary Program Regulations
Section 315, issued in 1974, revisions proposed in 1983
- 15 CFR 923 - CZM Program Development and Approval
Sections 305 and 306, issued in 1979, revised 1982
- 15 CFR 925 - State Coastal Zone Management Programs issued in 1975,
superseded by Part 923
- 15 CFR 926 - CZM Program Development Grants, Allocation of Funds to
States Section 305, issued in 1975 (Authorization for
program development grants removed in 1980 amendments.)
- 15 CFR 927 - Allocation of Program Administration Grants
Section 306, issued 1979, revised 1982
- 15 CFR 928 - Review of Performance
Section 312 and 316, issued 1982
- 15 CFR 930 - Federal Consistency with Approved CZM Programs
Section 307, issued in 1979
- 15 CFR 931 - Coastal Energy Impact Program
Section 308, issued in 1979, revised 1982
- 15 CFR 932 - CZM Interstate Grants
Section 309, issued in 1977
- 15 CFR 933 - CZM Research and Technical Assistance
Section 310, issued in 1977

316(a)(8) A SUMMARY OF A COORDINATED NATIONAL STRATEGY AND PROGRAM FOR THE NATION'S COASTAL ZONE INCLUDING IDENTIFICATION AND DISCUSSION OF FEDERAL, REGIONAL, STATE, AND LOCAL RESPONSIBILITIES AND FUNCTIONS THEREIN.

The Coastal Zone Management Act of 1972, as amended, declares the national policy "to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations." The 1980 amendments to the Act specify the scope and emphasis of a national coastal management program by identifying nine national objectives which must be addressed by the states in their federally-approved programs. These objectives, found in Section 303(A) through (I), are:

- Protect natural resources,
- Manage coastal development to avoid hazardous areas,
- Give priority consideration to coastal dependent uses and energy facility siting,
- Provide public shorefront access,
- Assist in redevelopment of urban waterfronts and ports,
- Coordinate and simplify governmental procedures to ensure expedited governmental decisionmaking for management of coastal resources,
- Consult and coordinate with Federal agencies,
- Provide the opportunity for public participation in coastal decisionmaking, and
- Provide comprehensive planning, conservation, and management of living marine resources.

Since 1974, the Federal Government has provided \$234 million to the coastal states to develop and implement their coastal programs. Currently 28 coastal states and territories are implementing federally-approved programs covering over 90 percent of the United States coastline and one State, Virginia, is funding its own effort to develop a federally-approvable program. In FY 1982, following an appraisal of the success of coastal management efforts and the need for fiscal restraint, in accord with the original intent of the legislation, the Administration sought to have the states and territories assume greater financial responsibility for continuing their CZM programs, and instituted a policy of phasing-out Federal financial support. The Administration generally has attempted to increase the portion of financial support contributed by the user or beneficiary of Federal programs and activities. For instance, among coastal programs, the Federal Emergency Management Agency (FEMA) now requires 25 percent state and local cost-sharing for disaster relief. User fees are also under consideration for a wide range of previously subsidized Federal activities, such as dredging for deep water ports and NOAA's production of maps and navigational aids.

In concert with this sharing of financial responsibility, twin initiatives are underway to increase the state and local control of coastal decisionmaking and to reduce Federal regulatory duplication of state and local programs. Most notably, the Corps of Engineers and the states have cooperated to expand the number of state and regional general permits for activities that cause only minimal individual and cumulative environmental impacts. In many cases, state approval of a project becomes the triggering mechanism for Corps approval. States thus assume greater control of activities affecting their coastal resources and Federal regulation is reduced. Similarly, Executive Order 12372 eliminated the federally-prescribed A-95 process for the state review and coordination of Federal financial assistance and direct Federal development projects, and permitted the states to develop their own system for this purpose.

States and local governments remain the primary coastal managers. The states are concentrating on assuring a permanent coastal management program, fully integrated with ongoing state functions, and on identifying sources of funding to support their assumption of coastal management responsibilities. In many states, local governments shoulder a significant portion of this coastal resource management responsibility. Local coastal programs are a requirement in Alaska and California, and are an important element of coastal management efforts in several other states such as North Carolina.

The states also are working together to identify and exchange expertise in common problem areas. In some instances, more formal interstate structures are being developed to coordinate efforts. Maryland, Virginia, and Pennsylvania have joined with the Environmental Protection Agency to form the Chesapeake Bay Council to develop a coordinated approach to the management of the resources of the Chesapeake Bay. (A portion of these efforts is being funded through a grant under Section 309 of the CZMA.) Another major interstate effort is ongoing in the Great Lakes region to address common problems. These interstate groups rely for financial support primarily on their own resources.

As the states assume a greater responsibility for funding coastal management, the role of the Federal Office of Ocean and Coastal Resource Management (OCRM) is changing from grants management to technical assistance and liaison between other Federal agencies and the states. OCRM's emerging technical assistance function is focusing on three areas--permit simplification, coastal hazards, and special area management planning (SAMP). A fourth area of concern, enhancing the cost-effectiveness of coastal management activities, is an integral part of these efforts.

OCRM also provides policy guidance to states and other Federal agencies on the administration of the Section 307 consistency provisions discussed earlier in this report, and on the application of consistency to specific actions, thereby enhancing the State/Federal partnership set forth in the CZMA for the management of the Nation's coastal resources.

As part of the major NOAA reorganization in 1982 (discussed earlier in the Executive Summary), OCRM continued to coordinate and develop NOAA-wide policy on Outer Continental Shelf (OCS) oil and gas exploration and development and on implementation of Superfund and National Contingency Plan activities, and assumed a similar role concerning coastal hazards and marine transportation. These responsibilities form the basis for further assistance to states and other Federal agencies on coastal issues. For example,

discussions are underway with the Corps of Engineers, the Federal Emergency Management Agency, and other elements within NOAA to combine resources to assist the states in their hurricane preparedness and evacuation planning efforts. OCRM will also continue to exercise the Federal responsibility under Section 312 of the CZMA to evaluate the efforts of the states in light of the national objectives and to assure the maintenance of approvable programs. As the states respond to evolving coastal management issues, in part through changes in their programs, OCRM will review and assess these changes to assure compliance with the CZMA.

316(a)(9) A SUMMARY OF OUTSTANDING PROBLEMS ARISING IN THE ADMINISTRATION OF THIS TITLE IN ORDER OF PRIORITY.

The following is a brief discussion of issues which, to a varying degree, have presented a problem in the administration of the CZMA. Because of differences in the nature of the issues, they cannot be ranked in order of priority. Rather they are addressed according to the numerical sequence of the relevant sections in the CZMA.

Significant Improvements (Section 306(a)(3))

When the 1980 amendments to the CZMA were passed formally establishing the concept of "significant improvements", the amendments modified the Declaration of Policy and identified nine national coastal management objectives that states were required to address in their approved coastal management programs (Section 303(A) through (I)). After its first year of program implementation, each state would be required to spend an increasing proportion (up to a maximum of 30 percent) of each financial assistance award on significant improvements in achieving these nine objectives. Through regulation, the states were directed to spend a minimum of 20 percent of the Federal funds in their second award on significant improvements, with a one percent increase for each subsequent award.

In 1981, changing national priorities resulted in a decision by the Administration to accelerate the phase-out of Federal financial assistance for the CZM and CEIP programs. Although phase-out funds have been authorized since that time, the level of Federal funding to the states is much less than the amount available when the "significant improvements" requirement was enacted in October 1980. Under these circumstances, the states have reordered their priorities and used the limited Federal funds to maintain the basic structure of their approved programs while they developed alternative state funding. A review of the implementation of the CZMA, conducted by the Department of Commerce's Office of the Inspector General in 1983, criticized OCRM for not requiring more new or expanded projects as significant improvements. However, OCRM's regulations, which allow flexibility in determining significant improvements, are appropriate for dealing with this issue. Through this period, the OCRM has worked with the states to identify activities which could meet the requirements of the CZMA without jeopardizing the states' core programs.

Coastal Resources of National Significance (Section 306(i))

Section 306(i) of the CZMA encourages states to inventory and designate areas containing "coastal resources of national significance", and to specify standards to protect these resources. The provision states that if "... a coastal state has failed to make satisfactory progress in the activities described in this subsection by September 30, 1984, the Secretary shall not make any grants to such State provided under Section 306A." The latter Section, which has never been funded, allows appropriated funds to be used for the preservation or restoration of these areas of national significance, the redevelopment of urban waterfronts and ports, and the provision of public access to beaches and other coastal areas. Because of the lack of or prospect for funding, OCRM decided not to promulgate unnecessary regulations for this section.

The Inspector General's report, referenced above, recommended that OCRM take more aggressive action to implement the Congressional intent of this section. OCRM responded that much of the information required for an inventory as described in that section has been acquired by the coastal states during the program development phase under Section 305 as part of the resource identification requirement for Federal approval of their programs. OCRM is undertaking a study to identify the extent and adequacy of existing inventories and other data and to enumerate those resources yet to be afforded special consideration. However, Congress has not allowed use of its appropriated funds for Section 306A purposes, therefore, the incentive for state action is limited.

Consistency (Section 307)

Under Section 307(h) of the CZMA, a state or Federal agency party to a dispute over the implementation of the consistency provisions of the CZMA can request the Secretary of Commerce to mediate. States have requested mediation five times during the biennium. The specifics of these requests have been discussed earlier in this report. In each case, the Federal agency involved (Department of the Interior, Interstate Commerce Commission, and National Marine Fisheries Service) declined to participate. The absence of a viable mediation process forces some disputes into the courts even though, in some cases, mediation would better serve the goals of intergovernmental coordination under the CZMA.

Estuarine Sanctuary Issues (Section 315)

Management Plans

By the end of FY 1983, 15 national estuarine sanctuaries had been established. States were acquiring land, and developing and implementing research and education programs and management plans. As several of the older sites matured, OCRM found that the management plans were not sufficiently related to the resources and needs of each particular sanctuary. Rather than general, procedural plans, estuarine sanctuary plans had to be more comprehensive and provide substantive guidance for future actions in a rather small, discrete estuarine area. The planning process had to identify the key land and water areas to be purchased, develop site-specific research and educational programs, and rank projects and activities in priority order so they could be implemented in a cost-effective and time-efficient manner.

Toward this end, the Sanctuary Programs Division, within OCRM, sponsored a workshop for estuarine sanctuary managers in September 1982. The workshop's focus was on the development and implementation of effective management plans for estuarine sanctuaries. Since the workshop, the sanctuary managers and Sanctuary Programs Division staff have reviewed and substantially revised all of the estuarine sanctuary management plans. By and large, the plans are a much more effective management tool for ensuring the protection and use of the estuarine sanctuaries over time.

Translating Estuarine Research Into Coastal Decision-Making

The Congress intended that estuarine sanctuaries would be used to collect and disseminate information vital to effective coastal and estuarine management around the Nation. Based upon Section 312 evaluations and other information, OCRM concluded that only a few estuarine sanctuaries were having any influence on decisions affecting coastal and estuarine resources, and, in many cases, sanctuaries were isolated from the mainstream of state coastal management activities and programs.

OCRM is addressing this need to assure that estuarine sanctuaries are used to assist local, state, and Federal coastal resource agencies in addressing major coastal management problems through a new initiative called the Research and Education Information Coordination and Exchange Program (REICEP). REICEP sets up mechanisms for timely exchange of research information among sanctuaries, assists scientists by providing a basis for comparative estuarine research, and also assists states by strengthening the coordination between estuarine sanctuaries and the state agencies whose actions affect estuaries and other coastal resources. This program has improved communication among the sites comprising the National Estuarine Sanctuary Program. OCRM also is providing funding and direction to a nationwide effort to set up research and monitoring programs at individual sanctuaries that will address coastal management problems. The next biennium will see significant improvement in the way estuarine sanctuaries are used to provide information to assist states in making coastal management decisions.

316(a)(10) A DESCRIPTION OF THE ECONOMIC, ENVIRONMENTAL, AND SOCIAL CONSEQUENCES OF ENERGY ACTIVITY AFFECTING THE COASTAL ZONE AND AN EVALUATION OF THE EFFECTIVENESS OF FINANCIAL ASSISTANCE UNDER SECTION 308 IN DEALING WITH SUCH CONSEQUENCES.

The amendment of the CZMA to include Section 308 - Coastal Energy Impact Program (CEIP) in 1976 was based, in part, on the assumption that increasing energy development on the Outer Continental Shelf (OCS) would have a significant impact on the adjoining coastal states and that this impact would be one of "boom or bust", i.e. unprepared communities would have to provide a wide range of services and infrastructure to accommodate a large influx of personnel associated with the energy development and production activities, and could be left with a significant over-investment and burden when the energy resources failed to materialize or their extraction no longer needed significant personnel and onshore support. For several reasons, this phenomenon generally has not occurred, and the impacts have been less than anticipated. OCS energy production off the north Atlantic coast occurred at a much slower pace than envisioned, and exploration off the central and south Atlantic coast did not reveal any significant resources. In addition, the development of new exploration basins off the coasts of South America and Africa made the high costs of exploration in the deeper waters off the United States coast less desirable. A decline in gas prices and political problems halted the importation of liquified natural gas (LNG) from Algeria. Likewise, the continuing excess of refining capacity and current conditions make modernization of existing plants more practical than new construction.

Although all energy impacts have not materialized as foreseen in 1976, energy development has significantly affected some coastal areas. The development and transportation of petroleum in Alaska has a great impact on Anchorage which, functioning as the principal staging area for the various development sites, underwent a great expansion in building and services development. More recently the city has experienced a significant under-utilization of its resources resulting in empty office space and expensive infrastructure. Many of the small native villages have benefited from public works projects, funded through energy receipts, but have also seen a disruption of traditional patterns of hunting and fishing. The State of Washington has received spillover effects from the Alaskan energy development as support businesses have used the Seattle area for their operations base. The Washington coast also has seen major increases in tanker traffic. OCS energy activities impact California in a number of ways including increased shipping and pipeline development, potential increases in air pollution, and possible conflicts with fisheries and other natural resources. Energy development also impacts the states along the Gulf of Mexico. The dredging of pipeline corridors and access canals contributes to Louisiana's loss of approximately 50 square miles of wetlands annually. Both Louisiana and Texas coastal communities have experienced some problems in providing adequate public facilities for the personnel working on the offshore drilling rigs. However, state and local resources have been sufficient to ameliorate the most significant impacts. Coastal energy activity has also contributed positively to the social and economic conditions in many communities.

Table 4 depicts how the coastal states have used the CEIP grant funds to mitigate energy impacts. Alaska used its CEIP funds to help rural native communities to develop coastal plans to assist them in dealing with the impacts of intensive energy development. Louisiana and Mississippi undertook the majority of their projects to improve the public services to meet the demands of increasing population (6 and 3 projects respectively). Reviewing the use of CEIP funds by all coastal states as a whole, the largest expenditure of funds was made to purchase and develop parks and other public access sites; the largest number of projects focused on assessing the social, environmental, and economic impact of energy development. Most planning projects were directly related to specific energy projects including the use of solid waste for the generation of electricity. A substantial amount of the funds in all categories was passed through to local governments.

Only one loan for \$500,000 under Section 308(d)(1) was made during this period--a supplement to Pascagoula, Mississippi, to complete construction of an incinerator. This loan increased the CEIP loan portfolio to approximately \$128.4 million. During FY 1982-1983, principal and interest payments totalling \$21.5 million were collected including two loans which were paid off in their entirety. These repayments represent a 100 percent collection of all amounts due. Two early repayments of loans were received. Brunswick, Georgia, returned all funds which had been loaned (\$1.2 million) to construct a pier for the City of Brunswick, in order to sell the property to the Georgia Port Authority which intended to invest over \$10 million to up-grade the property. The Municipality of Anchorage Electric Utility refinanced its \$7.7 million CEIP loan at a lower interest rate through the private bond market. Four requests for repayment assistance also were received pursuant to Section 308(d)(3) of the CZMA. Repayment assistance requires the Secretary of Commerce to alter the repayment requirements based on a finding that coastal energy activity causes less than adequate revenues to enable the borrower to meet its obligations. All four repayment assistance requests were denied as not meeting the requirements of the CZMA.

Table 4

CEIP Grants FY1982-1983

Category	Number of States	Number of Projects	Total Federal Funds
CEIP Administration ¹	14	14	\$ 761,425
OCS Participation ²	9	17	751,070
Recreation/Parks/Access	12	29	2,630,109
Natural Resources Management	9	14	832,567
Urban/Waterfront Redevelopment Planning	4	5	172,577
Local Coastal Programs	2	NA	1,141,271
Siting of Industrial/ Commercial Facilities	6	8	272,957
Planning for Impact of Industrial Development/ Energy Facilities	18	52	1,818,965
Oil Spill Planning/ Mitigation	10	14	583,350
Planning/Design/ Construction of Community Infrastructure	10	16	1,899,057
Port Development	7	10	664,172
Other	9	18	716,977

¹Includes staff projects and local technical assistance.

²Includes public education and local technical assistance.

316(a)(11) A DESCRIPTION AND EVALUATION OF APPLICABLE INTERSTATE AND REGIONAL PLANNING AND COORDINATING MECHANISMS DEVELOPED BY COASTAL STATES.

While state CZM Programs have not actively organized interstate or regional groups for planning and coordinating, they have interacted with such groups on many occasions to their mutual benefit. Some of these are discussed below.

The New England Governors Conference (NEGC) meets on a regular basis and coastal issues are often on the agenda. In late 1982, the NEGC released the final report of the New England/New York Long Range Dredge Management Study, funded by the U. S. Water Resources Council with in-kind service from Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont (non-coastal State). The study explored the relationship between dredging and the region's economic well-being, recommended dredge management strategies at the interstate and state levels, and researched the technical aspects of dredge materials disposal and the dredging of highly contaminated harbor sediments.

In 1983, the NEGC cosponsored a forum with OCRM on the proposed Bay of Fundy Tidal Power Project to discuss the likely effects on the coastal area of New England and the Gulf of Maine.

Improved management of the Chesapeake Bay is a major regional concern in the South Atlantic. In 1983, OCRM awarded its first Section 309 interstate grant of \$250,000 to the Maryland Department of Natural Resources, representing the Chesapeake Bay Management Committee. The funds are being used to help implement a long-term monitoring strategy for the Bay by upgrading the existing computer and purchasing ancillary equipment for the University of Maryland Sea Grant Program and the Virginia Marine Resources Commission, and by assisting Virginia, Pennsylvania and Maryland in habitat monitoring activities by processing fisheries data for inclusion in the Chesapeake Bay data base.

Further signifying their concerns over Chesapeake Bay Management, the Governors of Maryland, Virginia, and Pennsylvania, in conjunction with the District of Columbia and the U. S. Environmental Protection Agency (EPA), sponsored a three day meeting in 1983 to discuss the results of the six year, \$27 million EPA Chesapeake Bay Study and to develop management strategies for preserving and enhancing the resources of the Bay. The states and EPA agreed to establish a policy-level Chesapeake Bay Council to direct joint activities regarding the Bay. A Chesapeake Bay Implementation Committee was also formed which, in addition to the three states and the EPA, included other Federal agencies such as NOAA, and will function through subcommittees to coordinate and implement the directives of the Chesapeake Bay Council. Maryland and Virginia also began to develop major state initiatives to better manage the resources of the Bay and the land-based activities which impact the Bay.

The Great Lakes Governors Conference, the Great Lake Basin Commission, and the International Joint Commission on the U. S. and Canada (IJC) have all been active in Great Lakes issues. In June 1982, the Governors of all the Great Lakes states, except Ohio, New York, and Pennsylvania which sent representatives, the Premier of Ontario, and a representative from Quebec met to discuss issues of mutual interest. The agenda included Great Lakes water diversion, ports user fees, forgiveness of the St. Lawrence Seaway debt, formation of a Great

Lakes Marketing Corporation, and U. S. participation in the United States-Canada Water Quality Agreement of 1972. As a result of the meeting, the Upper Great Lakes Governors' Council (Michigan, Minnesota, and Wisconsin) was expanded to include Indiana, Illinois, and Ontario, thus including Lakes Michigan and Huron, as well as Superior, in a multi-state management forum. In addition, task forces were established to review the institutional structures relating to interbasin water transfer (the participants agreed not to act unilaterally on this issue) and to establish uniform toxicant level standards for all five Great Lakes. Since that time, Ohio has joined as a full time member, and Quebec continues to express interest because of its concern about the St. Lawrence River.

The Great Lakes Commission and the Council of Great Lakes Governors (CGLG) met during May 1983 to discuss the economy of the region, OCS revenue sharing, Federal water financing and cost-sharing policies, interbasin water transfer, recreational boating safety and facility development, deep draft navigation user charges, Great Lakes dredging, seaway tolls, winter navigation, and other issues of interest to the Great Lakes region. In another joint meeting in the fall of 1983, the main topics of discussion between the GLGL and the IJC were acid rain and regional water diversion efforts.

The state coastal programs work closely with the Sea Grant Cooperative Extension Service in the Great Lakes region. During early 1983, the Minnesota Sea Grant Extension Service sponsored a major regional conference involving many Federal, state, local, and industry officials--"Maritime User Fee Conference: A Forum on the Effects of User Fees on the Upper Great Lakes." This was followed in December 1983, by a Minnesota-Wisconsin Sea Grant Conference on "Export Policies To Improve the Great Lakes Economy".

During 1982, as a result of the efforts of the Red Cliff Band of the Lake Superior Chippewa Indians, a Great Lakes Indian Fishery Commission was established. It includes five tribes from three states--Michigan, Minnesota, and Wisconsin. All the tribes are in various stages of developing commercial fishing businesses. The Commission has a three-fold purpose: facilitating policy coordination, developing biological expertise, and public information and education. The Commission has received initial funding from the Bureau of Indian Affairs to assist in start-up operations. Development of this expertise by the Red Cliff Band is the result of continuing support from the Wisconsin Coastal Management Program.

The most active organization representing the Pacific Islands is the Pacific Basin Development Council (PBDC) comprised of the Governors of Hawaii, Guam, American Samoa, and the Northern Mariana Islands, and a small staff. In the past, PBDC has sponsored workshops on the region's economy and on CZM. A Regional Fisheries Development Plan was completed by PBDC in early 1983 which focuses on the capital needs and roles of the public and private sectors in implementing a fisheries development strategy. In addition, PBDC has coordinated with the Corps of Engineers on proposed general permits delegating permit authority to the island coastal programs.

316(a)(12) A SUMMARY AND EVALUATION OF THE RESEARCH, STUDIES, AND
TRAINING CONDUCTED IN SUPPORT OF COASTAL ZONE MANAGEMENT.

Research and education on coastal issues is conducted through the state CZM and CEIP programs, contracts and conferences/workshops funded by OCRM, and by the National Estuarine Sanctuary Program through individual sanctuary research and monitoring projects, and educational programs. A list of sanctuary research funded by NOAA during FY 1982-1983 follows this section. Part II, state summaries, highlights significant projects funded at the state level. The following is a brief description of major efforts funded by OCRM during the biennium period.

Conferences

In March 1982 and March 1983, OCRM and the Coastal States Organization jointly sponsored a series of workshop briefings on coastal issues for CZM State Program Managers. Several other Federal agencies and private organizations also contributed to these sessions.

In cooperation with the American Society of Civil Engineers, OCRM was one of over 35 organizations sponsoring a four-day national symposium in San Diego, California, in June 1983.

In July 1982, American Samoa hosted a Pacific Basin CZM Conference in cooperation with OCRM, Hawaii, Guam and the Northern Marianas. Participants concluded that their "unique island status" required that Federal programs be sensitive to the cultural and natural resources of those areas. NOAA programs in coastal management, fisheries, and ocean pollution assessment were identified as important to the Pacific Basin. Proceedings were published.

Coastal Hazards Efforts

Following Hurricane Alicia's pass through the southern part of Texas in August 1983, OCRM funded a damage assessment and hazards mitigation study. A report was released in October 1983 which explored why the damage appeared excessive in light of the severity of the storm and made recommendations for future mitigation efforts. Natural causes which contributed to the damage were identified as well as other factors which included local building practices and lack of building code enforcement. The recommendations concerned working with the builders, architects, and other relevant groups to create and provide training for improved coastal construction practices.

During FY 1983, OCRM initiated a study to assess the impacts of the passage of the Coastal Barrier Resources Act of 1982 which prohibits Federal financial assistance for development on coastal barriers for the purposes of minimizing loss of life, saving Federal dollars, and protecting natural resources. The Department of Interior has identified 186 undeveloped barrier islands to which the restrictions apply. The study, which focuses on Topsail Island, North Carolina, and Hutchinson Island, Florida, examines the responses of the major groups involved in coastal barrier development and management and assesses the implications of study findings for the Atlantic and Gulf States CZM Programs.

In May 1983, OCRM provided financial support to a symposium on "Preventing Coastal Flood Disasters--the Role of the States and the Federal Response", held in Ocean City, Maryland. It was sponsored by the Maryland CZM Program and the Association of State Floodplain Managers. State CZM Managers and other Federal, state, and local officials participated in these discussions. The symposium resulted in recommendations in several areas including: improved coordination of hazard mitigation policies and public expenditures for sewer and water, roads, flood control works, flood insurance, and disaster assistance; improved coastal hazard mapping; more effective protection of dunes, wetlands, and protective barriers; improved post-disaster response; and improved public education.

National Estuarine Sanctuary Manager's Workshop

In September 1982, OCRM sponsored a four-day workshop to assist National Estuarine Sanctuary managers in the development and completion of sanctuary management plans that would be consistent with NOAA policies regarding construction of facilities, supplemental land acquisition and research/education programs. The workshop, held in Port Deposit, Maryland, brought together management plan experts and practitioners who shared their expertise in managing natural areas, and in developing research/monitoring and interpretive programs. Approximately 50 people attended this workshop, which was a follow-up to the first National Estuarine Sanctuary Workshop held in 1979.

Estuarine Sanctuary Educational Programs

A basic goal of estuarine sanctuaries is to promote an awareness of the value of estuaries by providing an opportunity for public understanding of the need to preserve, protect and wisely utilize the natural resources of these areas through educational programs. During the biennium, several sanctuaries have been working on and publishing curriculum material for grades 4 through 12. Also the first two estuarine sanctuary interpretive centers were dedicated and opened to the public at Old Woman Creek, Ohio, and Padilla Bay, Washington. These centers are equipped with various habitat and ecology displays, a small theater, classrooms, a library, a hands-on room, and a laboratory. Estuarine sanctuaries attracted a wide diversity of individuals, families and groups who came for an educational, research or recreational purpose. For example, in 1983 the Padilla Bay National Estuarine Sanctuary and Interpretive Center drew over 20,000 people from 36 states and 10 foreign countries, and over 1,300 students in formal educational programs. Three more sanctuaries plan to dedicate interpretive centers in the next biennium: Apalachicola River and Bay, Florida; Elkorn Slough, California; and South Slough, Oregon.

Public Information Activities and Publications

The Coastal Zone Information Center (CZIC) provides a variety of information services to OCRM staff, state CZM programs, and the general public. CZIC researches questions on the coastal zone, mails out publications upon request, and provides referrals to those who wish to research a topic in detail. Other services include compiling selected bibliographies of source documents and directories of applicable information sources, and providing information about the history and current status of the coastal zone management program. CZIC houses materials on the history of the CZM program and a collection of state publications produced over the life of the Program.

During FY 1983, CZIC published its third edition of an annotated bibliography of over 1,500 state work products--a detailed guide to the work that has been sponsored under the CZMA.

In addition to the CZM Annotated Bibliography, several other publications were produced by OCRM during FY 1982-1983. The CZM Information Exchange is a publication which summarizes current activities in each state and provides updates on current legislation, Federal consistency issues, marine and estuarine sanctuary activities, and other coastal issues.

During FY 1982 and 1983, OCRM produced several state booklets which describe in detail a state's coastal management program and projects funded under the CZMA. Booklets were produced for the States of California, Florida, North Carolina, South Carolina, and Rhode Island in response to special events in these States.

Sanctuary Management Plans were approved and published for National Estuarine Sanctuaries at Old Woman Creek, Ohio; Narragansett Bay, Rhode Island; and Jobos Bay, Puerto Rico. These plans describe the significant natural resources of each site, sanctuary management goals and objectives, research and educational programs and facilities, and the management actions necessary to implement the plan. Management plans for the other twelve sanctuaries will be published within the next biennium.

In addition, several other general information documents were produced on a variety of subjects including the national CZM program, the CEIP, individual sanctuary sites, urban waterfront revitalization, and others. These brochures, along with the other publications, are available upon request.

SUMMARY OF NOAA FUNDED RESEARCH PROJECTS CONDUCTED AT NATIONAL ESTUARINE SANCTUARIES

SANCTUARY	FISCAL YEAR	TITLE OF PROJECT	OBJECTIVES
<u>FLORIDA</u>			
Rookery Bay	1983	"An Analysis of Nutrient, Chlorophyll, Heavy Metal, and Pesticide Levels in Rookery Bay NES"	<ul style="list-style-type: none"> to provide baseline data on the levels of nutrients, chlorophyll, heavy metals, and pesticides in Rookery Bay NES, to expand the data base and determine whether management policy changes are needed. to examine tidal and seasonal fluctuations of nutrients, chlorophyll levels, and suspended particles in Rookery Bay.
Rookery Bay	1983	"Distribution and Abundance of Benthic Invertebrates in Rookery Bay NES"	<ul style="list-style-type: none"> to inventory the benthic invertebrates in the sanctuary and examine the effects of physical, chemical, and sediment parameters on the distribution of the dominant species. to gather data on the life history, seasonal abundance, behavior, and feeding habits of dominant species. to identify potential pollution indicator species among the invertebrates.
<u>NEW YORK</u>			
Hudson River	1983	"Community Composition and Standing Crop of Vascular Vegetation in the Hudson River NES at Tivoli Bays"	<ul style="list-style-type: none"> to provide baseline descriptive information on fresh-tidal marsh vascular vegetation for the Hudson River NES research plan. to test the hypothesis that Hudson River estuary fresh-tidal marsh vascular vegetation is similar in species composition and above-ground standing crop to other East Coast estuaries.

SUMMARY OF NOAA FUNDED RESEARCH PROJECTS CONDUCTED AT NATIONAL ESTUARINE SANCTUARIES

SANCTUARY	FISCAL YEAR	TITLE OF PROJECT	OBJECTIVES
<u>OHIO</u>			
Old Woman Creek	1982	"Secondary Production in Two Lake Erie Habitats: Old Woman Creek Estuary and Sheldon Marsh"	<ul style="list-style-type: none"> to compare the use of a fresh water estuary and a nearby marsh as foraging and reproductive habitats for certain valued species of Lake Erie game fishes.
Old Woman Creek	1982	"Transport and Assimilation of Nutrients and Pesticides in the Old Woman Creek Estuary of Lake Erie"	<ul style="list-style-type: none"> to determine the patterns of input and output concentrations of nutrients and pesticides in Old Woman Creek. to obtain baseline data for refining several hypotheses relating nutrient and pesticide levels to storm events. to determine the ecological consequences of nonpoint source pollution on freshwater estuarine productivity.
Old Woman Creek	1982	"Parasites of Fishes in Old Woman Creek NES"	<ul style="list-style-type: none"> to examine, catalog, and compare the invertebrate parasites of several common fish of OWC estuary and an adjacent portion of Lake Erie. to understand the role of estuaries in maintaining parasite populations in both localized and lake-run fish populations.
Old Woman Creek	1983	"Fish Recruitment and Habitat Utilization in Two Lake Erie Environments: OWC Estuary and Sheldon Marsh"	<ul style="list-style-type: none"> to compare larval and adult fish production and habitat utilization in OWC estuary and Sheldon Marsh. to compare foraging patterns of white perch with white bass in OWC. to examine the effect of prey density and water currents on selection of foraging habitats by grizzard shad.

SUMMARY OF NOAA FUNDED RESEARCH PROJECT CONDUCTED AT NATIONAL ESTUARINE SANCTUARIES

SANCTUARY	FISCAL YEAR	TITLE OF PROJECT	OBJECTIVES
<u>OHIO</u>			
Old Woman Creek	1983	"Crustacean Zooplankton Distribution and Dynamics in the OMC Estuary and Adjacent Lake Erie"	<ul style="list-style-type: none"> to investigate the physical and biological processes which control life in the OMC estuary by comparing the species composition and successional dynamics of the crustacean zooplankton in the estuary with similar species in the adjacent nearshore zone of Lake Erie.
Old Woman Creek	1983	"The Terrestrial Vertebrates and their Relationship to Ecological Changes at OMC National Estuarine Sanctuary"	<ul style="list-style-type: none"> to establish baseline data on the terrestrial species of the OMC watershed. to investigate which sampling and indexing methods are most suitable for long-term monitoring of terrestrial species for detection of ecological changes in the OMC watershed.
<u>RHODE ISLAND</u>			
Narragansett Bay	1982	"Preliminary Selected Marine Biological Sampling in the Narragansett Bay Estuarine Sanctuary (Prudence Island)"	<ul style="list-style-type: none"> to gather baseline hydrologic and historic data in the waters adjacent to Prudence Island to provide a basis for long-term monitoring of changes in the sanctuary over time.
Narragansett Bay	1983	"The Impact of Human Activities on the Narragansett Bay NES as Shown by Historical Changes in Heavy Metal Inputs and Changes in Vegetation"	<ul style="list-style-type: none"> to assess the historical and current exposure of the sanctuary to various pollutants received from the Providence River and the atmosphere resulting from human activity, starting with the Industrial Revolution 200 years ago.

PART II

STATE SUMMARIES

INTRODUCTION

This section includes a brief summary of the status of each coastal state which is eligible for funding under the Coastal Zone Management Act. For the participating states, the report briefly outlines the basis and structure of the program, any changes to the program which have been processed during the biennium, the major activities which the state has undertaken with funding provided by the CZMA, major consistency issues, and the results of the evaluation of the program conducted under Section 312 of the CZMA. A description of the national estuarine sanctuaries is also included where appropriate.

ALABAMA

Background - CZM and CEIP Programs:

The Alabama Coastal Area Management Program (ACAMP) was approved in September 1979. The program was based on Act 534, the Coastal Area Act, which established the Coastal Area Board (CAB) and directed it to develop and implement a comprehensive management program. Act 534 also established the coastal boundary as the area from the contiguous 10-foot inland contour to the seaward limit of the State's territorial waters, including the coastal islands.

In 1982 legislation was passed which created a new Department of Environmental Management (DEM). CAB's responsibilities were transferred to the DEM and the Department of Economic and Community Affairs (DECA) in an effort to streamline the permitting process and consolidate environmental and regulatory programs in the State.

DECA is the designated lead agency for both the coastal management and Coastal Energy Impact Programs (CEIP). CEIP grant and loan assistance has been used for a variety of planning studies, public works construction, land acquisition, and environmental loss mitigation projects. Alabama's major energy impacts are from OCS development and coal export activities.

Routine Program Implementation (RPI) and Amendments:

No RPI's or amendments were processed during Fiscal Years 1982 and 1983, but changes to the Alabama program as a result of the 1982 reorganization discussed above will be submitted to OCRM as an RPI during FY 1984.

Major Activities:

The Alabama program concentrated on three core areas during FY 1982 and 1983: (1) administration (personnel, grant and contract processing, program evaluation, legal issues, and coordination); (2) implementation (permit information center, technical assistance, consistency review monitoring, and enforcement); and (3) planning (public access, port development, and tourist development). In addition, during FY 1983, staff time and funding were required to facilitate the reorganization effort.

CEIP projects funded during this period included road and park improvements in Mobile, Saraland, Chickasaw, and Daphne, necessitated by increased coal activities, and OCS monitoring and participation.

Summary of Evaluation Findings:

To allow the program time to settle in after the reorganization, fiscal years 1982 and 1983 were not evaluated until the week of January 23, 1984. Prior to this time, the last evaluation was held in the winter of 1981. Preliminary findings for FY 1982 and 1983 cited the passage of the 1982 Alabama Environmental Management Act which provides for one-stop permitting as a major accomplishment. Preliminary recommendations noted the need to revise the program document to reflect the reorganization, strengthen the

beach and dune protection provisions of the program, institutionalize county program responsibilities, accelerate special area management planning, and heighten public awareness and involvement. Final findings for this evaluation will be available in June 1984.

ALASKA

Background - CZM and CEIP Programs:

The Alaska Coastal Management Program (ACMP) was approved in July 1979. The program is based on the Alaska Coastal Management Act which created the Alaska Coastal Policy Council (CPC) charged with developing management guidelines and standards for the coastal zone. These legislatively adopted rules also guide the development of local coastal programs. Under the Act, the coastal boundary extends inland for varying distances based on biogeographical considerations. Legislation was passed in 1983 creating a new Office of Management and Budget (OMB) within the Office of the Governor. This office is the designated lead agency for coastal program implementation and State and Federal consistency review, and provides staff for the CPC.

Alaska's Coastal Energy Impact Program is administered by the Department of Community and Regional Affairs. The State's major energy impacts are from OCS oil and gas exploration and development.

Routine Program Implementation (RPI) and Amendments:

Changes to the ACMP during FY 1982-1983 included the completion of three local coastal programs (Hydaburg, Skagway with amendments, and Sitka), the adoption of the Anchorage Wetlands Management Plan and the Anchorage Scenic Coastal Resources and Public Access Plan, and the development of management standards for six native subsistence hunting and fishing areas that merit special attention (AMSA's) in the Hydaburg area. These were found to be RPI's under the Federal regulations.

Major Activities:

Alaska's third and fourth year programs focused on the development of local coastal programs, the streamlining of its Federal-State consistency review process, monitoring and enforcement, and management of the impacts of OCS oil and gas development. During FY 1982 and 1983, 14 local coastal programs were prepared and are in various stages of review. To assist this development, the ACMP produced a guidebook for local governments, held a series of implementation workshops, and initiated a monitoring and enforcement program. A comprehensive wetlands management plan was developed by the City of Anchorage which assigned all the freshwater wetlands within the city to either development, conservation, or preservation zones, and incorporated these zones into the local coastal program.

A regulatory reform program was initiated in 1982 that would have changed the Federal consistency process and streamlined the permit system, but it was not passed by the legislature. Instead, permit reform was accomplished administratively. As part of this effort, in 1983, the coastal management functions were reorganized under the Office of the Governor. Under the reorganization, the consistency review process was improved by the signing of a Memorandum of Understanding by various State agencies which provides for a unified interagency review of development activities requiring permits from more than one State agency and/or Federal agency.

Coastal Energy Impact Program funds were used primarily for administration, planning assistance to the Coastal Resource Service Area Boards in western Alaska to prepare for scheduled OCS lease sales, and the development of a legislative proposal for establishing a State Energy Impact Program in anticipation of the phaseout of the Federal CEIP.

Major Consistency Issues:

The major consistency issue facing Alaska relates to the sale of OCS oil and gas leases. During this period, three major OCS lease sales were scheduled off the coast of Alaska that caused concern over possible adverse impacts--Lease Sale 57, Norton Sound; Lease Sale 70, St. George Basin; and Lease Sale 71, Beaufort Sea. In all cases, State conclusions that the sales were inconsistent were later withdrawn based on negotiations and agreements reached between the Governor and the U.S. Department of the Interior (DOI) prior to the sale. Two local programs disagreed with findings of consistency, however. The Village of False Pass filed a lawsuit over Lease Sale 70, but the claim of inconsistency was later withdrawn when the Alaska District Court ordered DOI to prepare a supplemental EIS. The North Slope Borough also brought suit over Lease Sale 71, challenging two decisions by Secretary of the Interior Watt that changed the terms of the seasonal oil and gas drilling restrictions in the Beaufort Sea. The court rejected the plaintiff's arguments on the grounds that the risk of a spill during the exploratory phase of operations was extremely low. The lease sale occurred in October 1982. High bids totalled \$2,067,604,786 on 125 tracts.

Summary of Evaluation Findings:

The ACMP was evaluated in March 1982 covering the period June 1981 through March 1982. Program achievements noted in the findings included the approval of the Yakutat local coastal program, the protection of natural resources through the district programs, the proposed issuance of general permits to Sitka by the Corps of Engineers to expedite decisionmaking, and proposed improvements for protection of wetlands. Recommendations for strengthening the ACMP included improving the consistency process, providing additional guidance and assistance to district programs in the program planning stage, and improving monitoring and enforcement.

The most recent evaluation covered Alaska's coastal program for the period April 1982 through September 1983 and the Alaska CEIP from August 1977 through September 1983. The findings noted that reorganization of the CZM program in State government contributed to delays in meeting project benchmarks and other commitments. However, the reorganization, which legislatively assigns Federal consistency responsibilities to the new Office of Management and Budget, should improve implementation of the ACMP. Recommendations for strengthening the program included implementing fully the new interagency permit review process for conducting consistency review, enhancing OMB's role in the approval of district programs, planning for implementation of approved programs in Coastal Resource Service Areas, correcting problems with monitoring and enforcing State-wide Standards and Guidelines and approved district programs, and encouraging local governments to continue upgrading hazards mitigation plans with state-of-the-art risk assessment.

The CEIP played a major role in the State's ability to address concerns raised by the accelerated and expanded OCS lease schedule. CEIP funding augmented program implementation funding for developing district programs in areas affected by energy development. CEIP funds assisted the Alaska Departments of Fish and Game, Natural Resources, Environmental Conservation, and the OMB in contributing to the State's ability to assess potential impacts to coastal resources, including fish and wildlife. CEIP funds addressed growth problems by acting as seed money for infrastructure projects. The loan program provided credit assistance for essential water and sewer projects.

AMERICAN SAMOA

Background - CZM and CEIP Programs:

The American Samoa Coastal Management Program (ASCMP) was approved in September 1980. It is based on Executive Order 3-80 which directs all Territorial agencies exercising control over land and water areas and uses to act consistently with the policies of the ASCMP as set forth in the Executive Order. It designates the Development Planning Office (DPO) as the lead agency and directs it to approve all permits for any use, development, or other activity which has direct and significant impacts on the coastal waters of the Territory. The Executive Order defines the coastal boundary to include all of the Territory's land and water areas and designates two Special Management Areas (SMA): Pala Lagoon, a resource protection SMA, and Pago Pago Harbor, an economic development SMA.

The DPO also administers the Coastal Energy Impact Program. Samoa faces impacts from the siting and expansion of energy facilities.

Routine Program Implementation (RPI) and Amendments:

No changes to the ASCMP were processed during FY 1982-1983.

Major Activities:

The DPO continued its consolidated land use permit and review procedure for Territorial permits and Federal assistance projects (Project Notification and Review System) and continued to work on improving enforcement. Villages retain control of 92 percent of the land in the Territory and are governed by chiefs and councils. The DPO worked with seven of the villages to draw up land use plans that accommodate growth without destroying social and natural values. Samoa's Coastal Atlas, which includes information on soils, slopes, vegetation, land use, and population, was completed in August 1982 and provides decisionmakers with easy access to technical information for the first time.

Samoa hosted a well-attended Pacific Basin CZM Conference during July 1982. The conference concluded that the unique status of the State of Hawaii and the Territories of Guam, Samoa, and the Northern Mariana Islands required that Federal programs be sensitive to the cultural and natural resources of the islands. Proceedings of the conference were published. The program is developing a Master Plan for Pago Pago Harbor and has completed a land use plan for the port area. The DPO intends to work with the legislature to develop comprehensive legislation to institutionalize the coastal program.

The DPO used its allotment of CEIP funds to conduct an aerial survey of the islands in order to facilitate planning for pipeline sitings.

Summary of Evaluation Findings:

The program was evaluated in June 1982 covering the period May 1981 through June 1982. The findings noted that the American Samoa Government was adhering to its approved program and that adequate progress was being made on grant tasks. Two noteworthy accomplishments were the completion of the

Coastal Atlas and successful initiation of the Project Notification and Review System. The findings identified several areas where improvements could be made. These included monitoring and enforcement, streamlining of the Project Notification and Review System, and taking additional measures to protect Pala Lagoon.

CALIFORNIA

Background - CZM and CEIP Programs:

The California Coastal Management Program (CCMP) is comprised of two segments. The management program for the San Francisco Bay segment, which is administered by the Bay Conservation and Development Commission (BCDC), was approved in February 1977. The management program for the rest of the coast, which is administered by the California Coastal Commission, was approved in November 1977. The Coastal Commission is the designated lead agency. The program is based on the California Coastal Act of 1976, as amended, and the McAtter-Petris Act under which BCDC operates. The State's coastal boundaries extend inland generally to the first ridgeline of the coastal mountains and up to five miles where significant resources are involved. In the Bay area, the boundary extends inland generally 100 feet from the marshes and tidal surfaces.

Routine Program Implementation (RPI) and Amendments:

During FY 1982-1983 California submitted 23 modifications to its approved coastal program. These included 13 Local Coastal Programs; the San Diego Port Master Plan, and Port Plans for Los Angeles, Port Hueneme, and Long Beach; modifications to the BCDC segment (recreational marinas, the Seaport Plan, the Corps of Engineers regional permit, and others); and legislative changes to the California Coastal Act. These changes were found to be RPI's under the Federal regulations.

Major Activities:

During FY 1982-1983, the California program focused on regulatory elements, guiding local program development and implementation, ensuring public access, and developing policy guidelines for the cumulative impacts of offshore oil development. The Commission implemented a permit monitoring and enforcement program and the CCMP was active in Federal consistency issues, especially those involving OCS.

In the area of public access to the coast, the Commission published the California Coastal Access Guide, a book containing maps showing public access-ways, and worked with the California Coastal Conservancy to develop an access sign program to mark clearly those areas open to public access.

In November 1982, the Commission sponsored an Ocean Studies Symposium to develop recommendations for better management of nearshore ocean resources. The published report of this Symposium was the subject of concurrent Resolution 15 which was passed by the California legislature in April 1983, and which directed follow-up action on the report's recommendations in the 1984 legislative session. The recommendations related to aquaculture facility siting; the establishment of a California Fishery Management Council; marine mammal management, marine sanctuaries, refuges, and underwater parks; offshore energy and mineral activities; marine pollution; marine transportation; and a statewide shoreline erosion plan.

Severe winter storms during late 1982 and early 1983 caused considerable damage to the California coastline. Coastal Commission staff prepared a report and coordinated with the State Emergency Services office on future hazards mitigation policies.

The State used CEIP funds for a variety of projects and studies including OCS planning activities, local government coordination, energy facility siting planning, fishery data, and public access.

Major Consistency Issues:

OCS oil and gas activities continued to be the major Federal consistency issues for California. Another important consistency issue related to the impacts of the abandonments of railroad rights-of-way.

During 1982, California sued the Department of Interior (DOI) to enjoin leasing certain tracts in Lease Sale 53. In August 1982, in California v. Watt, the Ninth Circuit upheld a U.S. District Court's ruling in California's favor that the lease sale directly affected the coastal zone of California and that DOI would have to submit a determination that the lease sale was consistent to the maximum extent practicable with California's approved CZM program. In February 1983, Federal defendants filed for a Supreme Court hearing to overturn the Ninth Circuit's ruling. (Note: This decision was overturned by the Supreme Court in January 1984--see Part I, Section 316(a)(6), Federal Consistency.)

In November 1982, the Coastal Commission objected to Union Oil Company's certification that its proposal to drill two exploratory wells within the boundaries of the Channel Islands National Marine Sanctuary was consistent with the CCMP. In December 1982, the Secretary of Commerce received an appeal from Union to override the Commission's objection, but this appeal was subsequently withdrawn pending informal negotiations. A second appeal was filed in December 1983 and public hearings were held in February 1984. The issue is pending.

During 1983, the Coastal Commission found two Exxon proposals to be inconsistent with the CCMP. Both of these decisions were appealed to the Secretary of Commerce. In the first, the Commission objected to Exxon's off-shore oil storage and treatment option in its Development and Production Plan for the Santa Ynez Unit in the Santa Barbara Channel. (In the same proposal, the Commission concurred with the offshore production portion.) The appeal was filed in July 1983. In late September 1983, NOAA sent letters to Federal agencies seeking information on whether the Exxon proposal supported the national interest. The Department of Commerce conducted a public hearing in October 1983. In September 1983, Exxon brought suit in the U.S. District Court claiming that the Commission did not issue an objection to Exxon's consistency certification within the six month statutory review period and alleging other technical deficiencies. Both the appeal and the lawsuit are pending.

In the second Exxon proposal, also in the Santa Barbara Channel, California objected in July 1983 to Exxon's consistency certification for the proposed drilling of a maximum of three wells on the southwest one-quarter of Lease OCS P-0467 in the Santa Rosa Unit. The Commission objected because Exxon would not commit to drilling only during the winter season to reduce potential conflict

with commercial shark fishermen. In August 1983, the Secretary of Commerce received an appeal to override the Commission's objection. A public hearing was held in November 1983. Exxon subsequently withdrew its appeal as a result of informal negotiations. The Commission agreed to approve the drilling of one exploratory well. (Note: Exxon resubmitted a proposal to drill a second well in Lease OCS P-0467 in February 1984. The Commission objected and Exxon has filed a second appeal.)

During 1983, the Coastal Commission objected to several consistency certifications on railroad abandonments by the Interstate Commerce Commission on the grounds that the abandonments, including possible removal of tracks and future use of right-of-way, could be reasonably expected to affect land use in the coastal zone, such as public access, transportation routes, and commercial or residential development. Several cases are in various stages of litigation. Based on a U. S. District Court decision in Southern Pacific v. California Coastal Commission that ICC abandonment proceedings are subject to Federal consistency provisions, the Commission began to review abandonment applications as an unlisted activity. The ICC continues to dispute the applicability of Federal consistency provisions to railroad abandonment.

Summary of Evaluation Findings:

The CCMP was not evaluated during Fiscal Years 1982 and 1983. It is scheduled for evaluation in FY 1984. The last evaluation was held in October 1981. The final findings noted excellent progress in the areas of public access, preservation of wetlands, improved coordination and cooperation with State agencies, and continued protection of coastal resources. To strengthen the program, the evaluation report recommended that the State complete the development of local coastal programs and ensure an effective permit monitoring system, continue to improve State agency coordination and monitoring and enforcement, and examine the future role of the program.

The CEIP was evaluated in May 1983. The evaluation covered the period November 1977 through June 1983. The final findings noted that California received over \$7 million during that time to mitigate impacts from offshore and onshore OCS oil and gas development. Of that amount, 47 percent was provided to local governments for preparation of the energy components of local programs, development of local ordinances and regulations to implement their local programs, and participation in the Federal OCS lease sale process. The remainder was provided to State agencies and was used primarily for technical studies. In addition, funds were used to rehabilitate and improve existing access sites to the coast. The recommendations focused on the need to better target CEIP funds to areas most likely to experience impacts from OCS activities in view of the current Congressional prohibition of OCS development off northern California, and an emphasis on obtaining funds to continue the operation of air quality monitoring equipment purchased and previously operated with CEIP funding.

Estuarine Sanctuaries:Elkhorn SloughFacts:

Location: Monterey, California
 Size: 1,500 acres
 Biogeographic Region: Californian
 Acquisition Status: 81% complete

Description:

The Sanctuary is located on the south and east portions of the Elkhorn Slough. The small town of Moss Landing, at the mouth of the slough, contains the Moss Landing Marine Laboratory, which has been and will continue doing research on the slough. The Sanctuary and its environs are a valuable natural resource area. The waters, mudflats and salt marshes of the estuary are important sources of food and shelter for wildlife. The Sanctuary serves as an important link in the coastal flyway for migratory shorebirds, waterfowl and other water-associated birds. Not only do migratory birds feed and rest here, but many species are permanent residents, including the endangered California clapper rail.

Summary of Evaluation Findings:

The Sanctuary was evaluated in May 1983 covering the period August 1976 through May 1983. This first evaluation found that achievements were occurring in preparing the Sanctuary for public access and in the activities of the Advisory Committee. However, the findings conclude that the Department of Fish and Game has minimally adhered to the terms of its financial assistance awards. Recommendations for increasing the effectiveness of the Sanctuary operations and management include completing a management plan that will develop a strategy to facilitate continued program operation after Federal financial support is ended, and increasing communications between the adjacent property owners and Sanctuary Advisory Committee.

Tijuana RiverFacts:

Location: San Diego County, California
 Size: 2,531 acres (885 acres to be purchased)
 Biogeographic Region: Californian
 Acquisition Status: Acquisition scheduled to be completed by September 1986.

Description:

The Sanctuary is the southernmost coastal wetland in California, with an opening to the ocean only 1.5 miles north of the Mexican border. The marsh system is at the end of the Tijuana River, an ephemeral stream draining roughly a 1,731-square-mile watershed within Mexico and the United States.

The estuary extends about 1.5 miles inland and 3 miles along the ocean shore, and is almost completely separated from the ocean by a broad sandy beach and a narrow zone of low sand dunes.

The Sanctuary has a productive marsh containing 95 percent of the estuary's growth of cordgrass. The main channels branch into many small channels which are surrounded by areas of low marsh heavily vegetated with cordgrass or pickleweed. Also, during low tides, sizable areas of mud flats are exposed throughout the Sanctuary.

Summary of Evaluation Findings:

The Sanctuary was not evaluated during this biennium. It is scheduled for evaluation in September 1984.

CONNECTICUT

Background - CZM and CEIP Programs:

The Connecticut Coastal Management Program (CCMP) was approved in September 1980. It is based on the Connecticut Coastal Management Act of 1978 (CCMA), which established a set of policies, standards, and criteria for the use and management of Connecticut's coastal resources. The coastal boundary extends up to 1,000 feet inland from tidal wetlands or coastal waters, whichever is farther. The Department of Environmental Protection (DEP), which is the primary state permitting agency for both public and private coastal development activities, is the lead agency. The program is administered at the local level through incorporation of the CCMA policies and standards into municipal coastal site plan reviews. The State has the authority to intervene if a municipality approves a project which fails to adhere to the policies and standards outlined in the CCMA.

The Coastal Energy Impact Program is administered by the Office of Policy and Management. Energy impacts along the Connecticut portion of Long Island Sound are quite varied. They include shipping and storage of petroleum products, electric generating plants, nuclear power plants, extensive transmission lines, and the potential impact of alternative energy sources and OCS activities.

Routine Program Implementation (RPI) and Amendments:

In September 1983, the CCMP was modified to incorporate changes to the Connecticut Coastal Management Act (CCMA) which had been enacted during the 1982 and 1983 sessions of the Connecticut General Assembly. These changes included the clarification of terms used in the Act and uses subject to the Act, procedural changes to streamline and detail the permitting process, specific measures to make State and local standards for permit review consistent, and a reauthorization of the CCMA for a 10 year period. These changes were found to be RPI's as defined in the Federal regulations.

Major Activities:

The CCMP has placed emphasis on public access to the shoreline including funding innovative local projects. Bridgeport prepared a master plan for the revitalization of Pleasure Beach, an underutilized, blighted former amusement park. Norwalk designed a Harbor Center at its Veterans Park which reoriented the park toward the water.

A majority of the Federal funds received by the State were given to local governments to continue to conduct coastal site plan reviews and implement the voluntary municipal coastal programs. Twenty-nine of Connecticut's 41 coastal municipalities are developing coastal programs. Currently, one third of these have been completed. All localities are conducting coastal site plan reviews and many have adopted zoning ordinances based upon site plan review requirements. Other projects funded during this period included developing a management plan to restore the degraded Barn Island Wildlife Area, developing plans for improving public access on selected State-owned coastal properties, developing regulations for the State Structures and Dredging Permit Program

(closely coordinated with Federal 404 delegation possibilities), and preparing a fee schedule for DEP regulatory programs and for boat registration.

The CCMP drafted and submitted legislation to authorize local governments to prepare harbor management plans and to establish criteria for State approval of these plans. This legislation is pending.

The CEIP projects funded during this period included the establishment of oil spill response cooperatives along the Connecticut shoreline, restoration of erosion damage in New Haven Harbor, baseline environmental studies on Long Island Sound, and the development of a plan and field manual for protection of critical environmental areas from oil spills.

Major Consistency Issues:

In January 1983, the Connecticut DEP requested that the State Attorney General intervene against the Federal Railway Administration (FRA) regarding the effects of the Niantic Bay Crossing Bridge rehabilitation project on public beach access. The DEP maintained that FRA erred both procedurally and substantively by releasing funding for the project before submitting a consistency determination and by not designing the project to be consistent to the maximum extent practicable with the CCMP. An agreement was negotiated out of court under which FRA and Amtrak agreed to rebuild an old walkway and to provide a permanent easement to the beach, while the State agreed to accept responsibility for the maintenance of the walkway and to relieve Amtrak of liability for use of the walkway or the beach.

Summary of Evaluation Findings:

An evaluation of the CCMP was conducted in June 1982, covering the period June 1981 through May 1982. The evaluation found that the State had made outstanding progress toward accomplishing its program's goals. All 41 coastal towns were fulfilling their responsibilities under the CCMA, and many were making good progress in developing their municipal coastal programs. The State had undertaken several special projects including the preparation of a coastal development impact mitigation handbook, a tidal wetlands restoration study, an erosion hazard study, and the identification of State-owned rights-of-way to the coast. The recommendations for strengthening the program included increasing the effectiveness of local government enforcement by delegating authority to the local bodies to issue cease and desist orders for violations of State laws (legislation authorizing this delegation passed in June 1983), increasing the exchange of relevant information among the coastal towns and to the general public, and continuing to work with the Corps of Engineers to streamline Federal and State permit processes.

DELAWARE

Background - CZM and CEIP Programs:

The Delaware Coastal Management Program (DCMP) was approved in August 1979 and is based on a number of State laws including the Coastal Zone Act, the Wetlands Act, and the Beach Preservation Act. The program has defined its boundary as the entire State. The lead agency is the Department of Natural Resources and Environmental Control (DNREC).

Delaware's Coastal Energy Impact Program is also housed within the DNREC. Its five-year energy impact strategy identified four major issues: the impact of four new nuclear power generating facilities in Salem County, New Jersey, upon the most heavily populated area in Delaware; the effects of power plant conversions from oil to coal burning; the increasing likelihood of coal transfer storage-shipping facilities on the Delaware coast; and the likelihood of oil or gas pipelines locating in Delaware as a result of OCS activities, and the need to improve State planning and regulation of pipeline corridors and pipeline construction and operations.

Routine Program Implementation (RPI) and Amendments:

In October 1981, the Delaware General Assembly enacted legislation reorganizing the State's economic development and planning functions. As part of this reorganization, the responsibility for the DCMP was moved from the Office of Management, Budget and Planning to the DNREC. The legislation also replaced the Energy Facility Siting Liaison Committee with the Cabinet Committee on State Planning Issues. Other modifications to the DCMP undertaken by the DNREC included the negotiation of a Memorandum of Understanding (MOU) with the Delaware Development Office to coordinate activities in urban areas; the execution of an MOU with the Delaware Department of Agriculture regarding implementation of the State's Agricultural Lands Preservation Act of 1981, which formalized the policies contained in the DCMP; refinements to the regulations under the Wetlands Act and the Beach Preservation Act; and the development of an interim program under the Erosion and Sediment Control Act. These changes were found to be RPI's under the Federal regulations.

Major Activities:

The DCMP has devoted considerable effort to improvements in the management of the Inland Bay area, encompassing the Indian River and Rehoboth Bays. This portion of the Delaware coast is under tremendous pressure from retirement and second home development. Problems facing the area include an increase in the sedimentation rate in the bays; surface water quality impacts from non-complying sewage and industrial discharges and both urban and agricultural runoff; closure of productive shellfish areas; and groundwater deterioration from saltwater intrusion, onsite sewage disposal, agriculture practices, and landfill leakages. The DCMP formed an Inland Bay Study Group, consisting of representatives from concerned State and local agencies, the University of Delaware, and private citizens, to develop solution options for these identified problems. The program also undertook a public education effort. As a result, a six month building moratorium was declared by Sussex County and a gubernatorially appointed study group was formed to develop recommendations for this area. The group's report is due to the Governor in May 1984.

The DCMP has streamlined its various permitting processes by establishing a Development Advisory Service which is a single contact point for all major development proposals. Through this service, a developer can informally meet with relevant Federal, State and local agencies to review a development proposal and identify any major problems or necessary modifications before significant resources are committed. The process is used to inform the applicant of permits and associated information needed for a decision, the criteria to be used in permit review and approval, and to render technical assistance. This has resulted in fewer delays in the permitting process and in projects better designed to address the concerns of the public agencies.

CEIP funds during this period have been used to complete an EIS on a disposal site for material dredged from the Christina River to maintain the depth at the Port of Wilmington; to examine railway drainage problems at the Port, to study the impacts of energy activities on Delaware City and Newark, and to undertake projects to improve the management of Delaware Bay fisheries in light of the potential impact of proposed coal transshipment facilities in the Bay area.

Summary of Evaluation Findings:

An evaluation of the DCMP was conducted in October 1981 covering the period June 1980 through October 1981. Areas of progress and accomplishment included the Open Marsh Water Management Program for controlling marsh mosquitoes with minimal environmental disruption, implementation of the Natural Area Preservation System, promulgation of certification procedures for conservation easements, adoption and implementation of regulations for the Beach Preservation Act, and improvements in the rural wastewater management program. Areas needing improvement included the promulgation of regulations under the Coastal Zone Act, the continued efforts to improve management of the Inland Bays area, and the need to improve consistency review procedures for Federal projects.

FLORIDA

Background - CZM and CEIP Programs:

The Florida Coastal Management Program (FCMP) was approved in September 1981. It is a networked program, as required by the State enabling legislation, and is based on 25 existing authorities. The entire State and its territorial waters are included within the coastal boundary. The Department of Environmental Regulation (DER) is the lead agency. The DER works closely with the Department of Natural Resources, Department of Community Affairs and the Inter-agency Management Committee (IMC) in implementing the program.

The Coastal Energy Impact Program is administered by the Department of Community Affairs. Florida's major impacts are from electrical generating plants, but the State will face future impacts as OCS and coal import activities increase.

Routine Program Implementation (RPI) and Amendments:

No changes to the FCMP were processed during FY 1982-1983.

Major Activities:

Major areas of focus for the FCMP during FY 1982-1983 included a statewide program of hurricane hazard mitigation planning, the development of long-term port maintenance dredging and spoil disposal permits and plans, and assistance for areas of critical concern. The State provided increased staff support for the IMC and the Federal consistency process, and developed a consistency handbook for the use of State and Federal agencies.

The Florida program supported a State review of environmental laws to determine whether programmatic or legislative amendments were necessary. Two entities were created to conduct this review--the Governor's Environmental Land Management Study (ELMS) Committee (supported in part by CZM funds) and a Growth Management Committee selected by the legislature. As a result of these efforts, legislation was passed to strengthen and provide more funds for the Environmental Land and Water Management Act. This is expected to improve planning in the Florida Keys which has been designated a coastal "area of critical State concern". The DER is developing a list of FCMP legislative and rule changes that occurred since 1981, which will be submitted to OCRM in early FY 1984.

CEIP projects during this period included planning studies for OCS energy impacts and deepwater port spoil disposal, development of a mineral leasing plan for State waters, analysis of the impacts of a power plant located in Taylor County, and State participation in the Federal OCS oil and gas leasing process.

Major Consistency Issues:

The primary consistency issues were related to OCS oil and gas development, fishery management plans, and ocean disposal of dredge spoil from the Port of Tampa. Florida found proposed Lease Sales in the South Atlantic

(scheduled for July 1983) and the Eastern Gulf of Mexico (scheduled for November 1983) inconsistent with FCMP policies. A Memorandum of Understanding was signed in May 1983 that included agreements reached between Florida and the Department of Interior (DOI) (certain tracts were dropped and additional studies were agreed upon) concerning the South Atlantic sales. State concerns regarding the Eastern Gulf Sale were largely addressed by Congressional action.

The mackerel, coral reef, snapper-grouper, reef fish, and blue fish fishery management plans were all found to be inconsistent with the FCMP. The principal reason was that State statutes incorporated into the FCMP prohibit the use of certain gear types (e.g. fish traps, pound nets, and purse seines) which are allowed in the fishery management plans. Florida brought suit over the mackerel plan and requested Secretarial mediation in the snapper-grouper plan. The Secretary of Commerce, on behalf of the National Marine Fisheries Service (NMFS), declined to mediate because NMFS found the plan to be consistent with the FCMP to the maximum extent practicable. In September 1983, the U.S. District Court for the Southern District of Florida found the Florida statute which prohibits fish traps for saltwater finfish to be unconstitutional to the extent that it attempts to exercise the State's authority over the Fishery Conservation Zone beyond State waters. The State has appealed.

The State also successfully negotiated an agreement with Corps of Engineers and EPA regarding the designation of an offshore spoil disposal site in Federal waters off Tampa. The State's consistency certification agreed to the temporary use of the site; and the development of a monitoring program to assess the impact of the use of the site while providing for the long-term designation of this or other sites based upon review of the monitoring program.

Summary of Evaluation Findings:

The program was evaluated in June 1982 for the period September 1981 through May 1982. The findings noted achievements in hazards mitigation and other areas. It recommended that significant increases be made in staffing to provide adequate administration of the CZM grant, support for the efforts of the Interagency Management Committee, and implementation of Federal consistency review procedures.

The program was evaluated again in October 1983 covering the period June 1982 through October 1983. The report indicated that progress had been made in resolving the concerns identified in the first evaluation, particularly increasing core program staff. Additional programmatic accomplishments included the completion of a management plan for aquatic preserves in the Charlotte Harbor area, development of an orderly process to maintain channel depths in deepwater ports, and completion of several hurricane evacuation plans. Areas needing attention were coordination of various planning and regulatory aspects of resources management by the State working through the IMC, support of the IMC with funding and staff, support of upcoming legislative action related to wetlands protection, and continued improvement and clarification of the Federal consistency process including the completion of a Federal consistency handbook.

Estuarine Sanctuaries:Rookery BayFacts:

Location: Collier County, Florida
 Size: 9,000 acres
 Biogeographic Region: West Indian
 Acquisition Status: 68% complete

Description:

The Sanctuary preserves a large mangrove filled bay and two creeks. Management of the Sanctuary is jointly the responsibility of the Florida Department of Natural Resources, The Conservancy (of Collier County), and the National Audubon Society. This management structure originally was created when the two private organizations granted a dollar-per-year, 99-year lease of their land to the State. Federal and State funds added additional key acreage to the existing core area. Within the Sanctuary is The Conservancy's Norris Marine Laboratory. A headquarters building has been constructed to house an on-site manager and provide additional laboratory facilities for visiting scientists. In 1982, the Conservancy opened the Briggs Nature Center within the Sanctuary. The Center contains a classroom, preparation room and exhibit area. Leading from the center is a 2,500 foot boardwalk, which passes through most of the major habitats found in the Sanctuary.

Summary of Evaluation Findings:

The Sanctuary was evaluated in December 1983. Final findings will be available in June 1984.

Apalachicola River and BayFacts:

Location: Franklin County, Florida
 Size: 192,758 acres
 Biogeographic Region: Louisianan
 Acquisition Status: 47% complete

Description:

The largest estuarine sanctuary, Apalachicola River and Bay is one of the largest remaining naturally functioning estuarine systems in the Nation, and it is also the first sanctuary on the mouth of a major navigable river. The Sanctuary is characterized by a series of rivers, bays, bayous, and tidal creeks that are separated from the Gulf of Mexico by a chain of barrier islands. Pine flatwoods, hardwood hammocks, swamps, and marshes are associated with the river system. Wetlands found in the Sanctuary include rivers, streams, swamps, shallow freshwater and brackish marshes, and various forms of emergent and submerged vegetation that contribute to an exceptionally productive ecosystem. The bay supports major fisheries for oysters, shrimp, crab and finfish; it is also the major breeding ground for blue crab for the

eastern Gulf of Mexico. The Sanctuary benefits the oyster and other fishing industries by protecting the environment and by providing research information that will help assure the continued productivity of this river/bay ecosystem. Within the Apalachicola National Estuarine Sanctuary boundaries are an existing U.S. Fish and Wildlife Refuge, a State park, and a State refuge.

Summary of Evaluation Findings:

The Sanctuary was evaluated in December 1983. Final findings will be available in June 1984.

GEORGIA

Background - CZM and CEIP Programs:

Georgia has not participated in the Federal Coastal Zone Management Program since February 1980 when NOAA's Assistant Administrator for Coastal Zone Management found that the State was not making satisfactory progress toward meeting the requirements of Section 306 of the CZMA. At that time Georgia also lost its eligibility to receive CEIP funds.

Estuarine Sanctuary:Sapelo IslandFacts:

Location:	McIntosh County, Georgia
Size:	7,400 acres
Biogeographic Region:	Carolinian
Acquisition Status:	100% complete

Description:

The Sapelo Island Sanctuary, which was established in 1976, encompasses approximately 7,400 acres, of which 6,300 acres are marshland and 1,900 high ground. It includes most of the Duplin River watershed and contains southern hardwood forest, pure stands of pines, dunes and beaches. A 200 acre portion is managed for timber. The whole island, in addition to two adjacent islands, is preserved by various State and Federal agencies. Sapelo is the site of prehistoric Indian mounds, an oyster shell ring, and numerous plantation ruins from the late 18th and early 19th century. The only privately held property on the island, within a community called Hog Hammock, belongs to approximately 200 individuals whose families have lived and worked on the islands since the early 1800's.

The final NOAA operations and management award was terminated in June 1983. Although the 1983 session of the Georgia legislature denied a Georgia Department of Natural Resources request for new funding for the Sanctuary, the Commissioner of that Department has reaffirmed the State's commitment to the continued operation of the Sapelo Island Sanctuary.

Summary of Evaluation Findings:

In January 1983, the first evaluation of the operation of the Sanctuary was undertaken covering the period September 1976 through January 1983. During that period, the Sanctuary was operated primarily as an educational tour opportunity for visitors to Sapelo Island, and significant accomplishments were made in the development and implementation of educational programs and providing public access. However, the evaluation found that the research objectives of the Sanctuary were not being met. It recommended that several steps be undertaken to strengthen the effectiveness of the program. These included establishing a Sanctuary advisory committee, clarifying the University of Georgia's role in Sanctuary research, and developing a management strategy to facilitate continued program operation and improve program coordination.

GUAM

Background - CZM and CEIP Programs:

The Guam Coastal Management Program (GCMP) was approved in August 1979. The networked program is based on coastal policies and authorities found in Executive Orders 78-20, 21, 23 and 37, the Territorial Seashore Protection Act, and Public Law 12-200. The Guam Bureau of Planning (BOP) is the lead agency.

The coastal boundary includes the entire island. The Coastal Energy Impact Program is administered by the Guam Energy Office. The Government's energy impact mitigation strategy is directed toward reducing the impacts of continued reliance on oil importation by developing energy self-sufficiency and assessing the impact of ocean thermal energy conversion facilities.

Routine Program Implementation (RPI) and Amendments:

No changes to the GCMP were processed during FY 1982-1983.

Major Activities:

In August 1983, the Bureau of Planning completed its "development controls management assessment," a project begun during FY 1982 to control violation of construction and zoning standards. The assessment concentrates on improving enforcement of natural resource laws and streamlining the permit system. The legislature passed a bill drafted by the BOP to control development on military owned lands after they are resold. The legislation is based on a report entitled "Proposal for Zoning of Federal Lands," which proposes a new open space zone to apply to those areas. The BOP also completed a land use plan for publically owned lands along the shoreline. A plan for the inland portions is in preparation.

Several publications were issued during this period including the Reef Fisheries of Guam Handbook; Guide to the Coastal Resources of Guam, Volume I, The Fishes; An Introductory Guide to Guam's Land Use Laws and Permit Requirements; An Introduction to Aquaculture on Guam; Prospects, Permits and Assistance Procedures Guide for Achieving Federal Consistency with the Guam Coastal Management Program; Guam's Natural and Manmade Constraints; and Aquaculture Development Plan for the Territory of Guam.

Guam received CEIP funds to plan for the impacts of ocean thermal energy conversion (OTEC) facilities, coal transshipment and storage, and other energy projects.

Summary of Evaluation Findings:

The GCMP was evaluated in April 1982 covering the period November 1980 through March 1982. It was commended for its fisheries management plan, commercial port plan, and its aggressive public awareness and education program. Recommendations to strengthen the program were to maintain oversight of other Territorial agency actions to ensure consistency with GCMP policies, formally adopt the Federal consistency procedures developed by BOP, improve monitoring

and enforcement, and review the development controls system to manage coastal resources more effectively.

HAWAII

Background - CZM and CEIP Programs:

The Hawaii Coastal Zone Management Program (HCZMP) was approved in September 1978. It is based on the Hawaii Coastal Zone Management Act which directs State agencies and county governments to conduct their permitting and non-permitting activities in compliance with the Act's coastal policies. The Department of Planning and Economic Development (DPED) is the lead agency and is advised on policy making and program implementation matters by a Statewide Advisory Committee, composed of representatives from State agencies and county planning departments. The boundary of the coastal zone includes all the islands with the exception of the "forest reserves" which straddle the interior mountain ridges.

The DPED administers Hawaii's Coastal Energy Impact Program. Hawaii faces impacts from the development of ocean thermal energy conversion (OTEC) and other alternative energy sources, electrical generating plants, and oil transshipment.

Routine Program Implementation (RPI) and Amendments:

No changes to the HCZMP were processed during FY 1982-1983.

Major Activities:

During the biennium, the program focused on strengthening State agency and local government compliance with enforceable coastal policies, reducing the time necessary to process permits, and developing a management plan that would lead to new enforceable State policies for the management of Hawaii's ocean resources.

The State completed a land use plan for Kawainui Marsh on Oahu, the largest remaining freshwater wetland in the State. The plan represents a compromise for settling a major land use struggle involving the City and County of Honolulu, the State Land Commission, and DPED.

A task force comprised of county, State, and Federal agencies was formed to determine how to simplify the development permit system. Recommendations were made and refinements continue to be made.

The DPED completed a study of the effectiveness of the implementation of the Hawaii Coastal Zone Management Act since 1978. The study identified the progress made in solving problems in seven coastal policy areas and analyzed the effectiveness of State agency and county regulatory activity. The study will be submitted to the State legislature during 1984 to determine whether statutory changes are necessary.

CEIP funds were used for the development of an interagency work program to resolve problems with handling hazardous petroleum substances in the Barber's Point and Honolulu port areas. The work program is being negotiated by DPED, the State Department of Transportation, and the City and County of Honolulu.

Major Consistency Issues:

In June 1983, the U.S. District Court for the District of Hawaii denied the State's claim of inconsistency against the General Services Administration (GSA). The court dismissed a suit brought by the State and City and County of Honolulu against the Federal Property Board (Ono v. Harper). The plaintiffs challenged the Board's policy of denying no-cost public benefit conveyances of Federal surplus land. The specific instance involved the GSA's denial of the State's application for conveyances of two sites on Oahu--the Nike 5 and 6 missile site and the Maile Coast Guard site. In addition to other claims, the plaintiffs claimed violation of Section 307(c)(1) of the CZMA since GSA failed to conduct a consistency determination. The court found "mere transfer of title does not change the way in which the land is being utilized. Nor does the Federal Government, in selling the land, make any representations that the buyer will take the property free of any representations placed on the land by the State or the City and County of Honolulu."

The State formally requested (and later received) consistency determinations from GSA on the sale of Federal surplus property at the Honolulu Airport and Camp Malakole, Oahu.

In September 1981, the State notified the Western Pacific Fishery Management Council that its Spiny Lobster Plan was inconsistent with the HCZMP. Discussions began between the State, the National Marine Fisheries Service (NMFS), and the Office of Ocean and Coastal Resource Management (OCRM) regarding changes to the Plan that would make it consistent. The discussion resulted in recommendations that the Plan be amended to make it identical to State regulations for lobster fishery, including catch size; trap size; season closure time; requiring the lobster to be landed whole; prohibitions against the use of spears, chemicals, poisons, or explosives; and prohibitions against retention of lobsters carrying eggs. In addition, the State requested to review all permits but agreed to issue a blanket certification once the amendment was in place. The Spiny Lobster Plan was approved by the Secretary of Commerce in April 1982 and final regulations were effective in March 1983. Following additional negotiations with the State and OCRM, NMFS agreed to the proposed amendments with the exception of the restriction on the size of traps. A Notice of Availability of the Amendments was published in August 1983 and proposed regulations were published in September 1983. The public comment period on the regulations closed October 14, 1983.

Summary of Evaluation Findings:

The program was evaluated in June 1982 covering the period June 1981 through June 1982. Noteworthy accomplishments included the preparation of the "Coastal Concerns Guide", the development of the Kawainui Management Plan, the use of trained volunteers to augment the full-time conservation office staff, and the DPED's participation on the interagency task force on permit simplification. The findings recommended the DPED improve the compliance of the Land Use Commission and the Board of Land and Natural Resources with the HCZMA. Improvements to DPED's monitoring and enforcement program were also recommended.

Estuarine Sanctuary:WaimanuFacts:

Location: Island of Hawaii
Size: 5,900 acres
Biogeographic Region: Insular
Acquisition Status: 100% complete

Description:

The Waimanu National Estuarine Sanctuary, established in June 1976, is an isolated, stream-cut valley on the east coast of the Big Island of Hawaii. Because overland access is difficult, the 5,900 acre estuarine ecosystem has remained nearly pristine while other similar valley systems have undergone cultural modifications. The valley's natural richness was featured in "America's Majestic Canyons," published by the National Geographic Society.

Summary of Evaluation Findings:

The Sanctuary was evaluated in December 1983. Final findings will be available in June 1984.

ILLINOIS

Background - CZM and CEIP Programs:

Illinois is no longer participating in the Federal CZM Program. The program ended in December 1978 when coastal legislation required for Federal approval failed to pass. Primary opposition to the proposed legislation related to provisions for setbacks in erosion hazard areas and to increased public access to the lakeshore in private residential areas. At the same time, the State lost its eligibility for funds under the CEIP Program.

INDIANA

Background - CZM and CEIP Programs:

Indiana's participation in the Federal Coastal Zone Management Program ended in May 1981 when the State was unable to develop the necessary organizational structure to implement the authorities of its proposed program. At that time, the State also lost its eligibility for funds under the CEIP Program. However, CEIP grants already awarded to the State were allowed to continue until completion.

Summary of Evaluation Findings:

An evaluation of Indiana's CEIP for the period October 1978 through April 1981 was conducted in December 1982. The awards under this program were directed toward the mitigation or analysis of energy impacts on the Indiana coastline and were distributed throughout the shore area. Projects included the implementation of the Marktown Park Preservation Plan which had earlier been partially funded under a Section 305 grant; the renovation of the Jeorse Park Beach bath house in East Chicago which allowed the reopening to the public of Indiana's westernmost beach; the Hammond Dune and Swale (Gibson Woods) Environmental Preservation Project; the development of a Rail Accident Disaster Response Plan and follow-up activities in Porter County; and the Port of Indiana Coal Transfer Facility Study. The evaluation found that the State had used its CEIP to the best advantage in meeting the energy issues of its shoreline.

LOUISIANA

Background - CZM and CEIP Programs:

The Louisiana Coastal Resources Program (LCRP) was approved in September 1980, and is based on the State and Local Resources Management Act of 1978, as well as other pre-existing State laws which are incorporated into the program. The boundary of the coastal zone includes all or part of 19 coastal parishes and totals 5.3 million acres. The program is implemented primarily by the State through the coastal use permit program and pre-existing State permits. Local governments have the option of assuming responsibility for the permitting of a certain class of uses by developing a local coastal program which is consistent with State coastal policy. The Department of Natural Resources (DNR) is the lead agency.

In Louisiana the CEIP is administered by the DNR. It remains the largest Coastal Energy Impact Program among the states, addressing significant impacts from OCS oil and gas development in the Gulf and a large number of onshore support and supply facilities.

Routine Program Implementation (RPI) and Amendments:

No changes to the LCRP were processed during FY 1982-1983.

Major Activities:

Program efforts during this biennium focused on the implementation of the coastal use permit program; the formulation of barrier island, shoreline protection, and freshwater diversion plans; and the development and review of local coastal programs.

The program was instrumental in the passage of State legislation creating a \$35 million Coastal Environment Protection Trust Fund (CEPTF). During this period, several projects were approved by the Governor and the joint Natural Resources Committee for funding by the CEPTF, including erosion control and wetlands management projects. A significant portion of LCRP staff time was spent in negotiating with the Corps of Engineers on a Section 404 general permit for activities in the Louisiana coastal zone. This general permit became effective in September 1983. In another effort to reduce permit delays and enhance coordination with the Corps, joint public notice procedures were implemented in August 1983.

Local coastal programs were submitted by Cameron, St. James, and St. Bernard Parishes but were not approved by DNR because they did not meet State standards. The decision of DNR with regard to the St. Bernard and St. James plans was overturned by the Coastal Commission, an appellate body appointed by the Governor and the parishes, and has since been appealed to the courts by DNR. DNR decisions on several other LCP's were pending at the close of 1983.

A major conference on the problems and management options for Lake Ponchartrian was held in New Orleans during April 1983. DNR awarded a contract to support future efforts to develop a special area management plan for the Lake.

Major CEIP projects awarded during this period included construction of fire stations in Hackberry (the site of the U.S. Department of Energy's Strategic Petroleum Reserve) and Creole, restoration of boat ramps in Pt. Fourchon, and improvement of handicapped facilities in Lafreniere Park.

Summary of Evaluation Findings:

The program was evaluated in May 1983 covering the period November 1981 through June 1983. Significant progress was noted in the area of improving permit reviews including permit monitoring, negotiating a general permit with the Corps, and initiating numerous studies and projects through the CEPTF. However, the evaluation findings noted that program activities continued to be hampered by limited staff resources. The evaluation findings also identified the need for closer coordination between the State and the parishes concerning development and implementation of LCP's and the need for the State to develop a workable permit appeals process with the Coastal Commission.

The Coastal Energy Impact Program was evaluated in March 1983 covering the period October 1978 through March 1983. During this period, 131 projects were funded. Ninety percent of grants and loans went to coastal communities for projects ranging from hospitals accessible to OCS accident victims to the diversion of Mississippi water to avoid the loss of bald cypress swamps due to saltwater intrusion.

The evaluation found that the Louisiana CEIP had been used effectively in mitigating energy impacts. However, the findings recognized that the effectiveness of the State CEIP might be improved if a small part of the CEIP planning funds were used to identify specific infrastructure and environmental problems. Such a State-wide study of coastal energy impacts would have assisted the State in refining its Section 308(g)(2) allocation process and defining the need for specific projects. The study would still be valuable to the State and its local governments in guiding State or local activity, including funding assistance from other Federal or industry sources.

MAINE

Background - CZM and CEIP Programs:

The Maine Coastal Management Program (MCMP) was approved in September 1978. The program consists of 11 core laws administered by the State and local governments within a boundary that encompasses all coastal towns and townships on tidal waters, all coastal islands, and waters seaward to the extent of the State's territorial limit. The lead agency is the State Planning Office (SPO) which coordinates all programs activities and the activities of the core law agencies. These core law agencies include the Departments of Environmental Protection, Conservation, Inland Fisheries and Wildlife, and Marine Resources. Local agencies administer three of the 11 core laws.

The Maine Coastal Energy Impact Program is also administered by SPO. Energy developments which are anticipated to produce significant impacts on the Maine coast can be grouped into four major categories: OCS oil and gas exploration; oil transportation, storage, and refining; oil to coal conversion for electrical generating plants; and alternative energy projects.

Routine Program Implementation and Amendments:

No changes to the MCMP were processed during FY 1982-1983.

Major Activities:

A major issue facing the MCMP is the potential impact of a Tidal Power Corporation of Nova Scotia proposal to construct a dam on the upper reaches of the Bay of Fundy that would produce between 12 and 14 billion kilowatt hours of electricity a year. Scientists and environmentalists have expressed concerns that the rise in tides that will be created by the dam will cause erosion, damage coastal wetlands and fisheries habitats, and worsen the effects of storms. The MCMP has used CEIP funds for an environmental assessment of the effect of the project on the coast of Maine. CEIP funds also have been used to do an analysis of the socio-economic impacts from the new Canadian power source, complete a Department of Marine Resources' inventory of environmental and aesthetic resources of the coast most susceptible to oil spills, and develop oil spill persistency atlases for two coastal areas.

Major activities under the State's program implementation grant have included improving the enforcement and administration of Maine's core laws, implementing and refining a joint State/Corps of Engineers permit application, and establishing and implementing a new approach to allocating funds to localities on a competitive basis. Priority projects under this new system include revitalization of coastal waterfronts, improvements in public recreational access, management of coastal development through improved local land use regulations, and management of specific local natural resources.

Another major program activity is providing local technical assistance for improving coastal management. Over 20 local technical assistance workshops were held throughout the coastal area focusing on improving local land use ordinance administration.

A major program policy initiative during the period was the 1983 Maine Rivers Bill, signed by the Governor in June 1983. This Act affects over 130 miles of rivers in Maine's coastal area. It identifies the most critically important river stretches from a natural and recreational standpoint, prohibits hydropower development on these stretches, and enhances local control of shoreland uses and subdivisions along their shorelines.

An ambitious port development program initiated by Maine's coastal program continued to be implemented during this period with coastal program assistance. Fish piers with support facilities were completed or are near completion in seven Maine port communities, supported with \$20 million in State, local and Federal funds. A major ship overhaul facility was established in Portland, Maine, through joint efforts by the State, the City of Portland, and the Bath Iron Works Corporation. A cargo pier facility in Eastport was established and expanded with State funds and a proposed new cargo facility in Searsport was designed and submitted for State, local, and Federal approvals.

Summary of Evaluation Findings:

An evaluation of the MCMP was conducted in November 1981 covering the period October 1980 through September 1981. Accomplishments were noted in the State's review efforts for OCS development plans, its review and subsequent enforcement of core laws, and its water pollution abatement program in shellfish areas. Recommendations for strengthening the program included providing additional technical assistance to local communities on ordinance development and enforcement, and developing ways to increase coastal access.

An evaluation covering FY 1982-1983 was conducted in January 1984. Final findings will be available in June 1984.

Estuarine Sanctuary:

Wells

Facts:

Location: York County, Maine
 Size: 1,750 acres (300 to be purchased)
 Biogeographic Region: Acadian
 Acquisition Status: Not yet initiated.

Description:

The site is located near Drakes Island on the extreme southwestern coast of Maine. It is a remarkably natural area, considering its location along the suburbanizing Interstate 95 corridor. It contains barrier beaches, tidal marshes, and associated uplands in the Webhannet, Merriland, and Little River estuaries. The site contains a diverse variety of plant communities representing marine, estuarine, forest, non-forest, and agricultural systems. Although the estuarine portions do not sustain a large or varied finfish population (Atlantic and Coho Salmon are the important species), the area does support a wide variety of birds including two endangered species--the bald eagle and the peregrine falcon. Harbor seals are the only marine mammal species occurring

in the site. It is Maine's best remaining example of a sandy double-spit estuarine system in a natural state.

Summary of Evaluation Findings:

The Sanctuary was not evaluated during the biennium.

MARYLAND

Background - CZM and CEIP Programs:

The Maryland Coastal Zone Management Program (MCZMP) was approved in September 1978. The Program is based on the networking of existing State laws and authorities. Implementation is accomplished through Memoranda of Understanding (MOU) between the Department of Natural Resources (DNR), the lead agency, and other State agencies. These MOU's are supplemented by an Executive Order, a Secretarial Order, and two administrative procedures called "Project Evaluation" and "Program Review." The area affected by the Program includes 16 coastal counties and Baltimore City. Within these localities, an area of focus usually coinciding with the 100-year floodplain has been defined for more intensive management. In addition to the Tidewater Administration in the DNR, major responsibility for program implementation resides with the Department of State Planning and the Department of Health and Mental Hygiene. The Program contains a strong public participation element in the Coastal Resources Advisory Committee. This body acts through its various task forces to assist the DNR in addressing issues of significance to the MCZMP.

Maryland's Coastal Energy Impact Program is housed within the Tidewater Administration. The Program places considerable emphasis on the mitigation of coastal energy impacts as they relate to the opportunity for recreational access along Chesapeake Bay and its tributaries, as well as the environmentally acceptable management of dredging and associated spoil disposal.

Routine Program Implementation (RPI) and Amendments:

No changes to the MCZMP were processed during FY 1982-1983.

Major Activities:

The completion of the five year, \$27 million EPA Chesapeake Bay Program has been a major focus of interest for the MCZMP. The Coastal Resources Division within the Tidewater Administration was assigned the responsibility in the Department of Natural Resources for implementing the results of this major research effort. The Division used some of its Section 306 program implementation funds to address related issues such as doing an assessment of the impact of no-till farming techniques on water quality, working with the Kent and Cecil County Soil Conservation Districts in the development of farm conservation plans which address reduction of sediment and non-point source runoff in order to enable the farm owner to obtain State cost-sharing funding to implement needed improvements to farming management practices, and establishing an information system to assure the compatibility of ongoing data collection by the various State agencies. The DNR also was the administrative recipient of the first grant to be awarded under Section 309 of the CZMA. The funds were shared with Pennsylvania and Virginia to develop a Chesapeake Bay monitoring system as a continuation of the work begun under the EPA program.

The MCZMP also focused on watershed management activities, assisting local governments in developing watershed management plans and providing technical and financial assistance to the State sediment control and stormwater management programs to improve their effectiveness.

A major effort of the program was working with local governments to improve their ability to address coastal zone management concerns. Through contractual agreements, funding was provided to local governments to support staff working in local planning and zoning offices on CZM concerns.

Ocean City, Maryland's barrier island resort encompassing most of the State's Atlantic shoreline, continued to be a major focus of the MCZMP's efforts. The MCZMP undertook a study to determine the vulnerability of this barrier island to hazards, the adequacy of existing planning for action in the event of a major hurricane, and the need to develop a post-disaster recovery plan. Recommendations of the study included a revision to existing land use controls to reflect an awareness of coastal flood hazards; a procedure for modifying the Town's Building Limit Line to coincide with the currently designated V-zone and the development of a procedure to re-evaluate and re-adjust the line as the flood hazard area changes; the prohibition of additional canal development on the bay side which, if continued, would increase the potential for island breaching in the event of a storm; and the development of new policies on State investments in infrastructure to reduce the potential for storm damage and protect public safety. The report will be the basis of a comprehensive Flood Hazard Management Study for the area.

CEIP funds were used to assess the impacts of petroleum hydrocarbon releases in the Annapolis anchorage from vessels waiting entrance to Baltimore Harbor; to expand Maryland's major facility impact model to make it applicable to local governments and more types of facilities; to design and engineer a passive waterfront recreation area in Vienna; and to develop a recreation area on a former dredge disposal site on Tilghman Island.

Major Consistency Issues:

In a letter to the Department of the Interior, the State found that OCS Lease Sale 76 was inconsistent with the MCZMP, and requested that all nearshore blocks within 54 statute miles of Maryland's three mile limit be deleted to protect the recreational fishery and other resources of the coastal area. In addition, the State asked that a stipulation be included in the Notice of Sale requiring lessees of all tracts adjacent to and/or affecting Maryland to contribute to the support of a special oil spill response team to be located at Ocean City. None of the blocks of concern to the State received bids when the sale was held.

Summary of Evaluation Findings:

In February 1982, an evaluation of the MCZMP was conducted covering the period May 1981 through February 1982. The evaluation found the State continuing its strong commitment to the full development and implementation of a comprehensive living marine resources strategy, emphasizing a strong public participation and public information element, and working with local governments to address particular problems such as the revitalization of a public beach in Kent County and the development of a comprehensive watershed plan for the Sassafras River. Recommendations from the review included an evaluation of the critical areas program, improvements to the annual review of the Memoranda of Understanding which link the various agencies in the program, and an evaluation of program goals and operations.

A second evaluation was held in July 1983. It covered the implementation of the MCZMP for the period March 1982 through July 1983, the activities of the Maryland CEIP for the period August 1977 through July 1983, and the development of the Chesapeake Bay National Estuarine Sanctuary Program for the period September 1981 through July 1983 (see below).

The evaluation commended the MCZMP for assisting local governments in developing management plans for sensitive natural areas, formulating strategies for increasing public shorefront access, and developing comprehensive watershed management plans. The MCZMP undertook a bioeconomic study of Maryland's ocean fisheries and a Submerged Aquatic Vegetation Resource Management Study with particular attention to the impact of thermal discharges from power plants on this dwindling resource. Recommendations from the evaluation again focused on the need to evaluate and enhance the State's Critical Areas Program and to continue the efforts to reduce the flood hazard vulnerability of Ocean City. Special attention also was directed to the need to improve the financial management system of the grant recipient.

The evaluation found that the CEIP funds had been used effectively by the MCZMP to address a number of concerns including identifying spoil disposal sites needed for maintaining navigational channels in the Chesapeake Bay; mitigating and guiding development in Baltimore Harbor; responding to the OCS Lease Sales affecting the State; and mitigating recreational losses resulting from increased energy activity.

Estuarine Sanctuaries:

Chesapeake Bay

Facts:

Location:	Monie Bay, Somerset County (eastern shore) Rhode River, Anne Arundel County (western shore)
Size:	Monie Bay - 3,343 acres Rhode River - 2,275 acres
Biogeographic Region:	Virginian
Acquisition Status:	95% complete

Description:

Maryland is developing a statewide estuarine sanctuary system which, when complete, will include sites reflecting the broad diversity of salinity, physical systems and biota of the Chesapeake Bay. The two initial designated components are the Muddy Creek portion of the Rhode River in Anne Arundel County representing typical mid-bay western shore estuaries, and the Monie Bay in Somerset County representing typical lower bay eastern shore estuaries.

Summary of Evaluation Findings:

The evaluation, which was conducted in July 1983, found that minimal progress had been made in developing the necessary management programs for the two sites. The Memoranda of Understanding with the participating organizations had not been finalized, and many tasks set forth in the operations awards had been delayed. The recommendation was that no additional Federal

funds for operations or the acquisition of additional sites be given until basic problems are resolved.

MASSACHUSETTS

Background - CZM and CEIP Programs:

The Massachusetts Coastal Zone Management Program (MCZMP) was approved in April 1978. The lead State agency is the Executive Office of Environmental Affairs which administers most of the regulatory activities associated with the program. The coastal zone boundary extends 100 feet inland of specified major roads, rail lines, or other visible rights-of-way which are located up to 1/2 mile from the coastal waters or salt marshes, including all of Cape Cod, Martha's Vineyard, and Nantucket. The key laws include the Act to Protect the Massachusetts Coastline, the Wetlands Protection Program, Waterways Program, Wetlands Restriction Program, Ocean Sanctuary Program, and Energy Facility Siting Program. The Wetlands Protection Program is jointly administered by the State and local Conservation Commissions.

The Executive Office of Environmental Affairs administers the Coastal Energy Impact Program. Energy activities which impact the Massachusetts coastal area include the transportation, transfer and storage of oil and gas; coal conversion of existing oil fired electric generating facilities; and the impact of OCS oil and gas exploration and development.

Routine Program Implementation (RPI) and Amendments:

Changes to the MCZMP during FY 1982-1983 included the designation of the Weymouth Back River and its environs as an Area of Critical Environmental Concern, thus highlighting it as a valuable natural resource area. The MCZMP also promulgated regulations under the Mineral Resources Act, and revised the regulations under the Wetlands Protection Act to establish standard definitions and uniform procedures by which the Conservation Commissions and the Department of Environmental Quality Engineering implement the Act. Two Governor's Executive Orders also were incorporated into the MCZMP. Executive Order 181 discourages inappropriate development on barrier beaches by coordinating existing State regulatory authority and prohibiting the use of State funds and Federal grants for construction projects which would encourage growth and development in hazard prone barrier beach areas. Executive Order 190 requires State agencies to balance off-road vehicle uses with other recreational uses on the Commonwealth's public lands. These changes were found to be RPI's under the Federal regulations.

Major Activities:

The MCZMP continued to offer technical assistance to local communities, project developers, and public agencies; monitor and coordinate Federal, State, and local regulatory activities affecting coastal resources; identify public rights-of-way along the North Shore; and assist local coastal communities to identify, evaluate, and resolve their coastal problems. In attempting to continue the latter effort with reduced funds, the MCZMP commissioned a public opinion survey to determine critical issues for local communities. The results of the survey were highlighted in a pamphlet which was widely distributed.

New legislation to institutionalize this networked program was passed in 1983. The legislation formally recognized the Office of Coastal Zone Management in the Executive Office of Environmental Affairs as the coastal management agency and gave it responsibility for developing new criteria for tidelands licensing. The bill also included \$18 million for fishing piers and \$7 million to rehabilitate Long Wharf, the major access area to Boston Harbor.

The MCZMP used its CEIP funds for several recreational and public access projects for the towns of Swansea, Fall River, Barnstable, Quincy, Chelsea, and Boston Harbor; and comprehensive waterfront revitalization in Beverly, including the construction of a public landing. Several projects also were initiated aimed at mitigating energy impacts to Massachusetts shellfish and fisheries resources.

Major Consistency Issues:

Reflecting its serious concern with fisheries, Massachusetts has been very active in its review of proposed OCS lease sales. In January 1983, the Commonwealth disagreed with the Department of the Interior's (DOI) finding of consistency for OCS Lease Sale 52, contending that the sale did not minimize impacts on traditional fishing grounds, fish resources and spawning areas, and wildlife and other marine resources as required by the policies of the MCZMP. Several actions to remedy these problems were suggested including the deletion of 98 tracts. Subsequently, a U.S. District Court in Massachusetts issued a preliminary injunction halting the sale, and DOI cancelled its plans. This decision was later upheld in the U.S. Court of Appeals.

Massachusetts objected to a Corps of Engineers certification of consistency for the proposed State Program General Permit No. 41 citing inadequate application, public notice and agency review procedures, and the lack of clearly identified categories and locations of activities that are consistent with the provisions of sound environmental management. The proposed permit was later withdrawn by the New England Division Corps of Engineers.

The MCZMP requested, and received approval, to review the DOI Certification of Rehabilitation Design for the Commonwealth Pier Five Project as an unlisted activity. The pier is listed on the National Register of Historic Places and is proposed for revitalization which will include commercial facilities, a hotel, parking, and cruise ship facilities. The approval was based on the expectation that this activity would affect the maritime use characteristics of the Boston Harbor area as well as public access to the waterfront. No objections to the request to review were received.

Summary of Evaluation Findings:

An evaluation of the MCZMP was held in November 1981 covering the period December 1980 through November 1981. The accomplishments of the MCZMP during this period included significant contributions to investigating and identifying the extent of the PCB contamination in the Acushnet River Estuary in New Bedford, substantial reductions in review time for OCS-related permit applications, coordination with FEMA to acquire the first storm-damaged properties on barrier beaches under Section 1362 of the National Flood Insurance Act of 1968, and facilitating the issuance of the final National

Pollution Discharge Elimination System permit for exploratory drilling on Georges Bank, with new permit conditions for the discharge of drilling muds and cuttings. Recommendations of the evaluation focused on improvements to the Wetlands Program.

MICHIGAN

Background - CZM and CEIP Programs:

The Michigan Coastal Management Program (MCMP) was approved in August 1978. The Department of Natural Resources' (DNR) Land Resources Programs Division is responsible for administration and management of the MCMP and the Coastal Energy Impact Program. Major authorities under which the MCMP is administered include: the Shorelands Protection and Management Act; the Great Lakes Submerged Lands Act; the Sand Dune Protection and Management Act; the Inland Lakes and Streams Act; and the Michigan Environmental Protection Act. The Natural Resources Commission establishes policy and guidelines for all DNR programs based on recommendations of a Citizens Advisory Committee and the Standing Committee on Shorelands and Waters. In addition, the Inter-Departmental Environmental Review Committee, the Michigan Environmental Review Board, and the Governor's Cabinet Committee on Environment and Land Use serve as forums for coordination and conflict resolution. The MCMP has defined its lakeward coastal boundary as the jurisdictional border Michigan shares with Canada's Province of Ontario and the States of Minnesota, Wisconsin, Illinois, Indiana, and Ohio. The landward coastal boundary extends a minimum of 1,000 feet from the ordinary high water mark, with extensions or bridges around areas containing resources or uses with a physical, chemical, biological or other demonstrated impact upon the Great Lakes. These areas include significant coastal features such as sand dunes, wetlands, and coastal lakes.

The major coastal energy impacts on Michigan's shorelines are from coal storage and transshipment. Coal transport on the Great Lakes has reached 40 million tons annually and has caused increased erosion in the connecting water ways, increased port dredging and resultant dredge disposal problems, contributed to the loss of many acres of wetlands for coal storage and fly ash disposal, caused air and water quality problems, and displaced coastal parks and recreational boating facilities as well as decreased public access.

Routine Program Implementation (RPI) and Amendments:

No changes to the MCMP were processed during FY 1982-1983.

Major Activities:

The MCMP has taken steps to keep the public involved and informed with respect to the program's activities and to assist local communities in managing their coastal areas. These activities included publishing and distributing a booklet which explained the Shorelands Protection and Management Act and the most frequently asked questions and answers; conducting zoning workshops to encourage communities to adopt local zoning amendments related to high risk erosion areas; providing technical assistance to a Monroe County community to determine the impact of wave run-up and wave-breaking zones on flooding conditions and to evaluate the impact that proposed projects would have on the shoreline; and assisting several communities such as Mackinac Island and Frenchman's Cove in developing innovative land development control programs to protect their unique historic and natural resources.

Michigan has made very effective use of its low-cost construction funds. In many instances, coastal funds were used as a catalyst to get larger projects started and to leverage additional funds for actual implementation from other sources such as the State's Land and Water Conservation Fund. Local low-cost construction projects included the restoration of historically significant buildings and the restoration and improvement of public access to the shore. At the State level, these projects included boardwalks over coastal sand dunes and wetlands, and interpretive displays at several State parks. In 1982, the Michigan State Planning Society bestowed its award of excellence upon two coastal projects: the Linked Riverfront Park in Detroit and the Visual Improvements Plan for the industrial riverfront of the Downriver community. Between 1980 and 1982, CZM projects have received over 50 percent of the Society's awards. The Shorelands Advisory Committee conducted a field meeting during which an inspection was made of several low-cost construction projects funded by the MCMP. The Committee unanimously agreed that projects should continue to be funded by the State.

The MCMP staff increased its sensitivity and awareness of the problems of the handicapped at a training session sponsored by the Governor's Commission on Handicap Affairs. As a result of the training, the staff conducted extensive field work in an effort to inventory handicap facilities along the shoreline. This field work culminated in the development of a brochure which describes the State's coastal facilities and locations accessible to handicapped persons. Under the designation as a Demonstration State for Low-Cost Construction projects, the MCMP funded several projects designed to provide access to coastal facilities for handicapped persons. For example, at Pere Marquette Park, located in Muskegon County, beach access for handicapped persons was provided by constructing a concrete walkway from a parking area to the pier with a removable wooden platform and ramp that connected the pier to the water's edge.

The MCMP continued to simplify its permitting processes. The computerized permit information system was enlarged to incorporate 10 additional resource-related laws, to identify all projects requiring approvals under more than one law, and to enhance the effectiveness of the reports generated by the system. Implementation of the new rules for Act 247, the Great Lakes Submerged Lands Act, simplified the permit process by providing objective guidelines for evaluating proposed projects and by allowing minor project permits on small, noncontroversial shore protection projects. Implementation of these new rules also allowed the State to implement a single application process for a wide range of water-related projects. This made the Act 247 and 326 (St. Claire Flats Act) rules compatible with the rules for several other State laws and the Corps of Engineers Sections 10 and 404 procedures.

During this period, CEIP funds were used to provide the City of Wyondatte funds to landscape the edge of Bishop Park to reduce impacts on environmental and recreational resources caused by the municipal power plant's coal storage area adjacent to the park; to provide funds to the City of Marquette to construct improvements and public access to the beach area in an effort to mitigate the impacts caused by the expanded coal storage operation at the Shiras Generating Plant; and to undertake a series of projects related to the mitigation of fish losses resulting from power plant operations.

Summary of Evaluation Findings:

An evaluation of the MCMP was held in May 1982 covering the period June 1981 through May 1982. The evaluation found the MCMP to be an efficiently run program with an effective regulatory system. Noteworthy program achievements were the promulgation of new administrative rules which clarified terms and procedures necessary to implement the Shorelands Protection and Management Act; promulgation of new administrative rules which established a minor permit category under the Submerged Lands Act; development of a consolidated permit application form for all regulated land and water activities; and assumption of responsibility for a six-month experimental program for issuing Section 404 dredge and fill permits on inland waters. To strengthen the program, Michigan was urged to consider delegating regulatory responsibilities to local governments and to develop a funding phasedown strategy.

MINNESOTA

Background - CZM and CEIP Programs:

Minnesota is no longer participating in the CZM Program. After four years of program development efforts, the State's last grant expired in September 1978. Local opposition from the two northernmost coastal counties resulted in the State's withdrawal from participation in the Federal program.

MISSISSIPPI

Background - CZM and CEIP Programs:

The Mississippi Coastal Program (MCP) was approved in September 1980 and is based, in large part, on the Mississippi Coastal Wetlands Protection Law and the Mississippi Marine Resource Council enabling legislation. The Bureau of Marine Resources (BMR) is the lead agency. Collectively, three "coastal program agencies" (BMR and the Bureaus of Pollution Control and Land and Water Resources, both in the Department of Natural Resources, and the Department of Archives and History) are responsible for monitoring decisions that affect the coastal area and for insuring that such decisions are made in accordance with the program's goals. The designated boundary encompasses the three coastal counties of Hancock, Harrison, Jackson, and all coastal waters.

The Bureau of Marine Resources also administers the Coastal Energy Impact Program. The State faces energy impacts from expanding petroleum production and refining activities and onshore support facilities.

Routine Program Implementation (RPI) and Amendments:

Seven revisions to the MCP were submitted during FY 1982-1983. The most important of these were changes to the Coastal Wetlands Use Plan (CWUP) to allow for the leasing of certain public trust wetlands in the southern half of Mississippi Sound for mineral development. The other changes provided for the development of marinas in several specific locations or made minor changes to the MCP policies. These were approved by OCRM as RPI's. The program document has been reprinted to reflect these changes.

Major Activities:

The program focused on the administration of the wetlands use permit, the development of Special Management Area programs (SMA) for two port areas, and public awareness. In the latter area, an informational wetlands poster was printed, five marine resource booklets for elementary and secondary school children were published, and an informative and colorful summary booklet describing the MCP was completed.

Substantial progress was made in developing SMA's for the Ports of Bienville and Pascagoula, resulting in a draft plan for Port Bienville and a preliminary sketch plan for the Port of Pascagoula. The identification of issues and preliminary research for the Pass Christian Port also was completed.

As a result of MCP efforts in coordinating the leasing and subsequent permitting of oil and gas development in certain portions of Mississippi Sound, an MOU was signed by BMR and other key State agencies involved in such development. It contains specific lease language which addresses the MCP as well as specific activity guidelines to be applied to subsequent development.

CEIP grants were used to build sewer facilities in Gulfport and a boat ramp on the Escatawpa River, restore the historic Marble Spring Bath, and for other planning projects. Loans were made to Gulfport-Biloxi (airport), Pascagoula (incinerator), and Jackson County (water pipeline).

Major Consistency Issues:

The major area of Federal consistency review involved Corps of Engineers dredging and spoil disposal projects in Harrison and Jackson Counties. Several issues related to long term disposal in Jackson County are being addressed through the Pascagoula SMA Plan.

Summary of Evaluation Findings:

The MCP was evaluated in June 1982 covering the period May 1981 through June 1982. MCP accomplishments included continued improvements in monitoring and enforcing wetlands regulations and reducing the time involved in issuing permits, initiation of SMA planning, the issuance of a Wetlands Use change allowing oil and gas leasing in the Mississippi Sound bottomlands with stipulations regarding State lease language and the MOU, and a wide variety of public information and participation activities. To strengthen the program, it was recommended that arrangements be made to provide legal services and other administrative assistance, an MOU be completed with the Corps of Engineers on expedited permitting, and maximum attention be given to making the SMA process work on an expedited basis.

The Coastal Energy Impact Program was evaluated during December 1982 covering the period February 1978 through December 1982. At the time of the evaluation, Mississippi had received grants for 41 projects, three loans, and an OCS participation award.

Projects highlighted in the findings included the Jackson County Water System -- a 12-mile 36" pipeline which directly serves OCS industries while reserving some capacity for future municipal use, the Pascagoula incinerator, the Gulfport-Biloxi airport terminal, and the Gulfport Harbor Square sewer installation. Also outstanding were the many park, coastal access, and recreation projects in all three coastal counties. Especially noteworthy were the Pascagoula Park acquisitions, one portion of which was for the Adventure Island playground which in December 1982 won a Presidential award; others included the University of Southern Mississippi (USM) outdoor classroom, and the Ocean Springs recreation center. Areas needing improvement included ensuring that work products were filed with OCRM; ensuring that projects which were behind schedule were pushed to completion, and where needed, that grant extensions were requested; and ensuring that awarded funds were used expeditiously.

NEW HAMPSHIRE

Background - CZM and CEIP Programs:

The New Hampshire Coastal Program (NHCP), Ocean and Harbor Segment, was approved in May 1982. The Program, which coordinates activities among the State agencies, is being completed in two phases. The first phase, the Ocean and Harbor Segment, covers the Atlantic Ocean, the Hampton Estuary, and the Portsmouth Harbor portion of the New Hampshire coast. Phase two, completing the management program for the entire coast including all areas under tidal influence, particularly the Great Bay, is under development. The boundaries of the first segment include all coastal waters to the seaward limits of State jurisdiction and all land along the State's Atlantic Ocean shoreline from Seabrook to the Portsmouth/Newington town line, extending inland 1,000 ft. or to the limits of the Wetlands Board jurisdiction over tidal waters, whichever is farther inland. The lead State agency is the Office of State Planning.

New Hampshire's Coastal Energy Impact Program is also administered by the Office of State Planning. The State faces impacts from several energy activities, including the transportation, transfer, and storage of hydrocarbons; nuclear power production; and power plant conversion from oil to coal.

Routine Program Implementation (RPI) and Amendments:

No changes to the NHCMP were processed during FY 1982-1983.

Major Activities:

A Technical Advisory Group (TAG), composed of representatives of State agencies with resource and development responsibilities on the coast, was established to coordinate State agency activities. The TAG meets as necessary to review and discuss progress under the coastal program.

In addition, a Coastal Advisory Committee, appointed by the governor and representing seven Atlantic coastal communities and six coastal interests, was formed in the Spring of 1983 to advise the Governor on coastal issues and problems, and to serve as a focal point for discussion on coastal matters. State coastal program staff assist the Committee.

CEIP funds were used to purchase oil spill prevention and control equipment to be used in the Portsmouth Harbor area; conduct recreational improvements in New Castle; restore marsh grass areas in Portsmouth Harbor which were depleted due to previous oil spills; undertake a hydro-power development study in the Town of Exeter; and fund other local communities and State agencies for energy impact planning projects.

Summary of Evaluation Findings:

An evaluation of the NHCP was held in May 1983 covering the period June 1982 through May 1983. Accomplishments noted included the implementation of planning projects funded through the NHCP, increased monitoring and enforcement of State water pollution and wetlands laws, and improvements in the State's ability to prevent and control oil spills.

Recommendations for strengthening the program included: developing a strategy to promote coastal awareness and an understanding of the NHCP in local communities; conducting activities which would increase Federal agency understanding of the program and the Federal consistency process; increasing wetlands inspection efforts by hiring additional staff; and working through the Council on Resources and Development (an interagency body of key State agencies) to provide policy direction and resolve conflicts of divergent coastal interests.

NEW JERSEY

Background - CZM and CEIP Programs:

The New Jersey Coastal Zone Management Program (NJCZMP), received Federal approval on September 29, 1980. The Bay and Ocean Shore Segment of the NJCZMP was approved in September 1978. The program is administered by the Department of Environmental Protection (DEP) which has regulatory control through the Coastal Area Facility Review Act (CAFRA), the Wetlands Act, the Waterfront Development Act, and the Riparian Statutes. The boundary includes: (1) the shoreline area up to the first road or property line from mean high water from the New York border south to the Raritan Bay; (2) the area under the jurisdiction of the Hackensack Meadowlands Development Commission; (3) an area extending from the Raritan Bay south along the Atlantic shoreline up to the Delaware Memorial Bridge, which varies from 1/2 mile up to 21 miles inland; and (4) an area north along the Delaware River to Trenton, extending inland to the first road inclusive of all coastal wetlands.

The lead agency for the Coastal Energy Impact Program is the Department of Energy. Energy impacts are being experienced from oil and coal transportation, transfer, and storage, and potential OCS activities.

Routine Program Implementation (RPI) and Amendments:

The NJCZMP was amended in January 1983 by a new New Jersey Coastal Resource and Development Policy entitled "Wetlands Buffer." This policy prohibits development within 300 feet of wetlands and within the drainage areas of those wetlands unless the development uses mitigating measures so that it does not have a significant adverse impact and causes minimum feasible adverse impact on the wetlands or on the natural ecotone between the wetlands and surrounding uplands.

Several other minor modifications to the NJCZMP were made which were found to be Routine Program Implementation under the Federal regulations. These included clarifications to the regulations under the Waterfront Development Act defining the circumstances under which illegal fill will be removed and the definition of exempted activities; the development of a Memorandum of Agreement with the Port Authority of New York and New Jersey concerning review procedures for waterfront development projects; and changes to the Rules on Coastal Resource and Development Policies pertaining to Limited Growth Areas and Low Density Development.

Major Activities:

In 1981, a constitutional amendment was passed which gave the State until November 3, 1982, to claim any lands which had not been flowed by the tides in more than 40 years. If the State failed to stake its claim, this land would belong free and clear to the upland owners. The State adopted 820 of the 1,632 tidelands claim maps. These claims together with claims previously adopted in the Hackensack Meadowlands area established the State's claim to about 67 percent of the land area now or formerly flowed by the tides. Much of the remaining 33 percent had already been granted to upland owners. The NJCZMP is now in a strong position to ensure public access and conservation for shore protection purposes.

The State updated its wetlands maps which were first promulgated in 1974 and 1975 and depict the regulatory jurisdiction under the State Wetlands Act. The update reflected both man-made and natural changes in the configuration of wetlands which occurred between 1972, when aerial photography was first taken of the wetlands, and 1982. This mapping added 1,500 acres to the State's jurisdiction.

New Jersey voters approved a \$50 million Shore Protection Bond Issue in November 1982, and the DEP committed the final funds from the 1977 \$20 million Shore Protection Bond Issue. In addition to beach nourishment and structural engineering, the DEP initiated an experimental program of using artificial seaweed (Seascape) to control erosion at Cape May Point and Stone Harbor Point.

Other efforts undertaken during this period included the institution of a public access beach shuttle program; the development of State strategies for the management and redevelopment of specific urban waterfront segments; expansion of technical assistance to the local governments on a broad range of planning, legal, and technical issues; evaluation of the Local Coastal Grants Program; and the implementation of the Shore Protection Master Plan.

The first waterfront park planned under a local coastal grant was opened in the City of Bridgeton in the fall of 1982.

The CEIP provided funds to assist the City of Elizabeth in acquiring property on the Arthur Kill for public recreational use and to allow the Ocean County Department of Parks and Recreation to redevelop Berkeley Island County Park.

Major Consistency Issues:

In FY 1983, the Third Circuit Court of Appeals held that the Environmental Protection Agency (EPA) acted arbitrarily in imposing a sewer hookup restriction on a grant for a sewage treatment plant when the New Jersey DEP had approved the particular development to be serviced by the hookup under its Coastal Area Facility Review Act, the statutory basis of New Jersey's approved coastal zone management program. The court ruled in Cape May Greene, Inc., v. Warren that EPA lacked the explicit authority to prohibit the proposed development in light of Congressional intention, expressed in the Coastal Zone Management Act, to delegate land use decisions in the coastal zone to state and local governments.

In July 1982, New Jersey filed in Federal district court seeking to enjoin the Department of the Interior's (DOI) re-offering of OCS leases, RS-2. The State requested that 23 of the 155 tracts be dropped on the grounds of alleged violations of the OCS Lands Act and that the Secretary of Interior had failed to provide the State with a consistency determination. The court considered two substantive consistency issues: whether the consistency determination must consider only "preleasing" activities, and whether the Secretary must determine the consistency of Federal activities that impact the socioeconomics of the coastal zone but do not directly affect the natural environment of the coastal zone. On September 7, 1982, Judge Debevoise delivered an oral decision in Kean v. Watt, agreeing with the position adopted by the Ninth Circuit in California v. Watt which broadly interpreted the phrase "directly affecting" to include preleasing activities. However, he also found that "activities of the

Federal agencies outside of New Jersey's coastal zone which affect commercial activities within the State's coastal zone but which do not affect the natural environment within such coastal zone do not directly affect the coastal zone within the meaning of Section 307(c)(1)..." (New Jersey claimed that the leasing of certain tracts would directly affect fisheries located within the Fishery Conservation Zone, and therefore cause economic injury to State fishermen.) This case has been mooted by the January 1984 Supreme Court decision discussed in Part I.

New Jersey disagreed with DOI's consistency determination on Lease Sale 76 based on the need for revisions to the Biological Resources and Transportation Stipulation and the reinstatement of the Geohazards Stipulation. The Governor requested mediation by the Secretary of Commerce, but the Department of the Interior declined to participate. The issue was resolved in April 1983 when a Memorandum of Understanding was negotiated between New Jersey and DOI which addressed the State's concerns.

Summary of Evaluation Findings:

An evaluation of the NJCZMP was conducted in March 1982 covering the period June 1981 through March 1982. Major accomplishments included the completion of the Shore Master Protection Plan and the Guidelines for a Master Plan for Dredging in Navigable Waters in New Jersey and several public access projects. Recommendations for strengthening the program included increasing municipal government involvement in the NJCZMP, providing technical assistance to municipalities in shoreline and dune protection, re-examining the Atlantic County Growth Area, and increasing public awareness of the program.

NEW YORK

Background - CZM and CEIP Programs:

The New York Coastal Management Program (NYCMP) was approved on September 30, 1982. The Department of State is the designated lead agency. The program is based primarily on the Waterfront Revitalization and Coastal Resources Act (WRCRA), the Coastal Erosion Hazards Act (CEHAA) and the Tidal Wetlands Act. The WRCRA provides the legal authority to establish a coastal program in the State. The Act establishes coastal policies for the State, establishes a coastal boundary, provides for optional local government waterfront revitalization programs, and establishes a process for coordination and consistency of State actions and programs with coastal policies. Generally, the coastal boundary is 1,000 feet from the shoreline, plus all identified geographic areas of particular concern. In urbanized areas and other developed locations along the coast, the boundary is approximately 500 feet from the shoreline or less than 500 feet at locations where a major roadway or railway line runs parallel to the shoreline.

The CEHAA provides for uniform setback requirements in coastal high hazard areas. Responsibility for CEHAA program implementation as well as enforcement of the Tidal Wetlands Act resides with the Department of Environmental Conservation (DEC).

The Department of State is also the lead agency for New York's Coastal Energy Impact Program. Major energy impacts result from power generating plants; the transportation, transfer, and storage of petroleum products; and offshore oil and gas activities.

Routine Program Implementation (RPI) and Amendments:

In January 1983, 25 minor changes to the text of the NYCMP were made in response to comments and suggestions received during the review of the Final Environmental Impact Statement. These changes were found to be RPI's under the Federal regulations.

Major Activities:

During its first year of operation, the NYCMP provided a considerable amount of funds to communities for the development of waterfront revitalization programs, including implementation funds for New York City which was the State's first approved local waterfront program. In addition, the NYCMP sponsored a Waterfront Revitalization Conference in Albany which provided technical assistance to local officials in such diverse subjects as waterfront festivals and amending local codes to incorporate coastal policies. The NYCMP also provided funds to the DEC to undertake studies to designate and map erosion hazard areas along the State's coastline.

During this period, the State used its CEIP funds to construct a pedestrian walkway and public access site under the Brooklyn Bridge, assist Ulster County in a park land restoration project, conduct a number of planning projects to assess and mitigate the impacts of proposed or existing energy facilities, and assist in the development of a Tidal Gauge System to measure tidal levels and wind speed and direction in New York Harbor and the Hudson River.

Major Consistency Issues:

The New York Department of State disagreed with the Department of the Interior's (DOI) consistency determination for OCS Lease Sale 52 based primarily on the risk of oil spills either from the lease area or tankers traveling along the Ambrose/Nantucket navigation line. The DOI responded that they had no responsibility over shipping regulations and, therefore, would have no way to enforce a stipulation on tanker routing. DOI later cancelled this sale.

New York also found OCS Lease Sale 76 inconsistent. The State contended that the petroleum development and production activities would adversely impact State coastal fishery resources and would pose an unacceptably high risk of economic losses to the coastal fishing and recreational industries. In April 1983, New York filed suit in U.S. District Court requesting that the sale be enjoined until the DOI deleted 135 tracts of concern, prohibited tankers from using the Nantucket to Ambrose navigation lanes, and applied the Geological Hazards and Biological Stipulation to certain tracts. An agreement was later reached which met New York's major concerns. Four tracts of concern to the State received bids in the sale. The DOI agreed that the geohazard and biological stipulations would be applied to these tracts. Because of the location of these tracts, any future tanker traffic would not be using the Nantucket to Ambrose navigation lanes.

Summary of Evaluation Findings:

The NYCMP was evaluated in June 1983 covering the period October 1982 through June 1983. The principal accomplishment during that period was the Department of State's activities in carrying out the Waterfront Revitalization and Coastal Resources Management Act, including the development of contracts with 64 coastal towns for the preparation of Local Waterfront Revitalization Plans. Recommendations for improving the program dealt with establishing better procedures for monitoring and enforcement, enhancing the quality and timeliness of coastal erosion mapping activities, providing more technical assistance to local governments on preparation of waterfront plans, and improving coordination with Federal agencies and the implementation of Federal consistency.

Estuarine Sanctuaries :

Hudson River Estuary

Facts:

Location:	Stockport Flats, Columbia County Tivoli Bays, Dutchess County Iona Island Marsh, Rockland County Piermont Marsh, Rockland County
Size:	Stockport Flats - 1,184 acres Tivoli Bays - 1,516 acres Iona Island Marsh - 556 acres Piermont Marsh - 934 acres

Biogeographic Region: Virginian
Acquisition Status: Majority of land in State ownership.
Negotiations underway to acquire the balance.

Description:

The four sites represent the Hudson River's highest quality tidal wetland complexes. All contain extensive high tidal marshes with comparable vegetation types, as well as tidal shallows and forested upland margins.

- ° The Stockport site comprises the mouth of a tributary stream (Stockport Creek) and a four-mile long series of peninsulas, islands, marshes and shallows along the east shore of the Hudson.
- ° Tivoli Bays comprises two large coves on the east shore of the Hudson River, North Bay and South Bay, and includes Cruger Island and Magdalen Island and associated tidal shallows, as well as the mouths of two tributary streams, Stony Creek and Saw Kill.
- ° The Iona Island marshes occupy a mile-long area between Iona Island and the west shore of the Hudson. The Iona Island site is part of Bear Mountain State Park, an element in the Palisades Interstate Park system.
- ° Piermont Marsh is one-and-one-half miles long, between Piermont and Sneden's Landing; it includes the mouth of a tributary stream (Sparkill Creek) and is surrounded by very extensive tidal shallows.

NORTH CAROLINA

Background - CZM and CEIP Programs:

The North Carolina Coastal Management Program (NCCMP) was approved in September 1978. The program is based in part on the Coastal Area Management Act (CAMA) although other State laws are networked as well. A State Executive Order requires all State agency actions to be consistent with the goals and policies of the NCCMP. The program's boundary extends to the 20 coastal counties and the lead agency is the Department of Natural Resources and Community Development. The Office of Coastal Management is responsible for implementing the NCCMP, with the Coastal Resources Commission (CRC) primarily responsible for the implementation of CAMA. Activities occurring within areas of environmental concern (AEC's) require a CAMA permit. These permits can be divided into two general classes: major development which is regulated at the State level, and minor development regulated at the local level with State overview.

The Office of Coastal Management also administers the Coastal Energy Impact Program. Its five-year CEIP strategy identifies peat mining and OCS activity (to the extent petroleum deposits are found) as the major energy impacts. To a lesser extent, the transfer and storage of petroleum products and coal are likely to affect coastal areas.

Routine Program Implementation (RPI) and Amendments:

No changes to the NCCMP were processed during FY 1982-1983.

Major Activities:

During 1982, a legislative study committee was formed to review the implementation of the CAMA. Hearings were held in the coastal area and the committee found overwhelming support for CAMA's continuation and strengthening. As a result of this review, three bills were passed to enhance the State's authority to manage and protect its coastal resources. These bills allowed the State to issue general permits for certain categories of activities; expanded the issuance of emergency permits; and shortened the time for review and issuance of major permits from 90 days to 75 days (with a 75 day extension provision). New permit fees also were established.

In implementing CAMA, the CRC has adopted new post-disaster policies requiring localities to prepare local disaster plans which will mandate the relocation of certain structures, such as utilities and roads, in the event of major damage. In addition, local land use plans are now required to address storm hazards with mitigation plans which include post-disaster elements. The State also requested assistance from the Federal Emergency Management Agency (FEMA) to relocate oceanfront structures that are in immediate danger from storms and are covered under the Federal Flood Insurance Program. Other CRC actions to protect the State's coastal resources included the development of more detailed standards for building beaches in estuarine areas; more detailed alignment of navigation channels relative to marsh fringes; expanded standards on the use of groins in estuarine areas; a new set of erosion rates; and a

change in the setback provisions which requires oceanfront structures with more than four units or more than 5,000 square feet to locate landward from the first line of stable natural vegetation a distance equal to 60 times the long term erosion rate or, if the erosion rate is less than 2 feet per year, a distance not less than 120 feet from the vegetation line.

The impacts of peat mining also have been a focus of concern for the NCCMP. Peat mines in the State total 16,000 acres and could potentially affect an additional 40,000 acres. The Synthetic Fuels Corporation is supporting the construction of a multi-million dollar plant to convert peat to methanol. Public hearings held by the NCCMP showed considerable concern with the impact of this mining on coastal waters and, consequently, the rich fisheries of the area. A coalition of environmental groups and local citizens brought suit against the U.S. Army Corps of Engineers contending that the peat development area should be classified as a wetland and be subject to Section 404 of the Clean Water Act. Both the Corps and the State contend these contested areas are not wetlands.

A study of sources and mechanisms of mercury and heavy metals in peatlands drainage was supported by CEIP funds. These funds also were used to develop an energy development and land resources information system; conduct a study concerning how to manage the impacts of energy development through the leasing of State-owned submerged lands; and to conduct an inventory of natural and cultural resources for submerged lands leasing.

The NCCMP is implementing a \$1 million beach access program passed by the General Assembly. Completed public beach access sites include: Nags Head (1), Kill Devil Hills, Surf City, Ft. Fisher (New Hanover County) Phase I, Wrightsville Beach, Long Beach, and Ocean Isle Beach. Projects underway include: Kitty Hawk, Nags Head (1), Carolina Beach, Topsail Beach, and Onslow County (1).

Major Consistency Issues:

North Carolina disagreed with the Department of the Interior's (DOI) consistency determination for OCS Lease Sale 78. The finding of inconsistency was based on three points: (1) the risks of spills from OCS operations and possible trajectories were not acceptably evaluated nor were appropriate mitigation measures applied; (2) the risks of environmental harm to fish spawning areas were not properly assessed or minimized; and (3) the "reasonable balance" standard was not met by the administrative process for incorporating state comments into Federal OCS decisions. North Carolina had reduced its review schedule to 69 days from 90 days in response to a request from DOI. DOI and North Carolina subsequently reached an agreement meeting most of the concerns. The agreement included: (1) deletion of 151 nearshore tracts (within the 200 meter isobath) including the tracts around the U.S.S. MONITOR National Marine Sanctuary, and (2) the rerunning of DOI's oil spill model using new data collected off North Carolina (this information would be included in the EIS prepared for the next offering and, under the agreement, North Carolina will be included in any discussions as to how this information will be used).

Two appeals to the Secretary of Commerce were received from private citizens whose proposed projects were found to be inconsistent with the NCCMP. The first involved the development of a marina on Bath Creek which was found inconsistent with the local land use plan. The appeal is still under review.

The second appeal involved denial of an "after the fact" permit for filling two wetlands sites. The second appeal has been dismissed for failure to provide necessary supporting information.

Summary of Evaluation Findings:

An evaluation of the NCCMP was held in January 1982 covering the period March 1981 through January 1982. The evaluation found that accomplishments had been made in adopting new and revised regulations, especially for inlet hazard areas and marinas and canals, and for addressing issues of setback reasonableness and expedited decision-making; implementing and improving the permitting program; updating local land use plans (LUP's); exploring policies to guide the leasing of underwater bottomlands; pioneering efforts towards a coordinated State-local post-disaster planning process; coordinating CEIP projects with other OCM efforts, particularly those related to major facilities siting for the export of coal; providing and financing new beach access legislation; implementing new Corps of Engineers General Permitting procedures for 80 percent of all eligible cases; consulting with State and Federal agencies; and improving and expanding public information and public participation efforts.

Recommendations for strengthening the program focused on the development and realization of a strategy for the long term financial maintenance of the program, improvements in the relationship between elements within the Department of Natural Resources and Community Development to better address water quality and agricultural runoff issues, and the expediting of studies so that the State might proceed toward the development and adoption of standards and procedures for leasing State-owned bottomlands.

The NCCMP was evaluated again in February 1984. Final findings will be available in July 1984.

Estuarine Sanctuary:

North Carolina System

Facts:

Location:	Carrot Island Component, Cartaret County Zeke's Island Component, New Hanover County Currituck Banks Component, Currituck County
Size:	Carrot Island Component - 2,025 acres Zeke's Island Component - 1,650 acres Currituck Banks Component - 2,807 acres
Biogeographic Region:	Carolinian and Virginian
Acquisition Status:	Carrot Island Component - 95% Zeke's Island Component - 100% Currituck Banks Component - negotiations to begin in FY 1984

Description:

The Carrot Island Component contains islands, marshes, intertidal flats, creeks, and shallow estuarine water. The site is approximately three and one-half miles long and one mile wide. It represents a well-mixed lagoon type

estuary strongly influenced by inlet processes, and encompasses a rich diversity of habitats.

The Zeke's Island Component consists of islands, marshes, tidal flats and shallow estuarine waters. The land area includes Zeke's Island, No Name Island, North Island and a portion of the ocean barrier spit. The system represents a drowned river valley estuary and is significant for its diversity, productivity, quality of habitat, flora and fauna including six endangered or threatened species.

The Currituck Banks Component includes beach, dunes, maritime forest, marshes, islands, and a portion of Currituck Sound. It exhibits a marked diversity of plant and animal life with northern and southern estuarine species being found abundantly side-by-side. One of the six small islands in the complex, Monkey Island, is a cultural resource which was historically occupied by the Poteskeet Indians.

Summary of Evaluation Findings:

The Sanctuary was evaluated in February 1984. Final findings will be available in July 1984.

NORTHERN MARIANAS

Background - CZM and CEIP Programs:

The Commonwealth's Coastal Resources Management Program (CRMP) was approved in September 1980. The program is based on CRMP Regulations which establish a coastal permit program and the boundaries for four types of Areas of Particular Concern (APC's): shoreline, lagoon and reef, wetlands and mangrove, and port and industrial. The regulations also provide for strict controls on activities outside of designated APC's which constitute "major sitings," thereby bringing into the purview of the CRMP all activities which may result in direct and significant impacts on coastal waters. In addition, mechanisms for designating future APC's are provided for by the program. The Governor's Executive Order 15 ensures full implementation of the CRMP by identifying those agencies responsible for permitting decisions within specific APC's and requiring that they act in conformance with the policies and standards of the program. The lead agency is the Coastal Resources Management Office (CRMO) within the Office of the Governor. The coastal boundary includes the entire land area comprising the 14-island archipelago and the territorial waters.

The Planning and Budget Affairs Office administers the Coastal Energy Impact Program for the Northern Marianas which faces impacts from the development of alternative energy sources.

Routine Program Implementation (RPI) and Amendments:

No changes to the CRMP were processed during FY 1982-1983.

Major Activities:

The major emphasis of the program was to streamline Commonwealth agency compliance with Executive Order 15 and the CRMP. Memoranda of Understanding between the CRMO and other Commonwealth agencies were renegotiated to provide additional clarification on the roles and responsibilities of the networked agencies and coastal coordinators in implementing the program. The CRMO began to prepare a strategy to institutionalize the program. This was accomplished in late 1982 through the passage of the Coastal Resources Management Act. Signed into law in early 1983, the Act adopted the existing coastal program, but modified it to include an Appeals Board for permit decisions. It also made other organizational improvements.

The Commonwealth continued to improve its permit program. Procedural changes were made to streamline the permit process. The program's performance was praised by the District Office of the Corps of Engineers for providing a mechanism for resolving conflicts with a minimum of Federal participation. A particularly significant permit decision resolved conflicts over the intensity and kind of development allowed on Managaha Island, a culturally significant and constitutionally protected area adjacent to Saipan. The permit allowed a private concern to improve and develop recreational and sanitary facilities on the Island while restricting the number of tourists.

A special project initiated during FY 1983 was the development of a resource management curriculum in the local schools. The curriculum will consist of a one semester course which will provide high school students with a basic

understanding of biological and physical processes. "Hands-on" experience using the coastal areas as a laboratory will be incorporated into the curriculum.

CEIP grants were used for administration and preparation of a comprehensive Saipan Lagoon Land Use Plan. In addition, an oil spill contingency plan was prepared and equipment purchased.

Summary of Evaluation Findings:

The program was evaluated in April 1982 covering the period May 1981 through April 1982. Several specific accomplishments were described in the findings including improvements in the permit process; the signing of the Fish, Game, and Endangered Species Act prohibiting dynamiting fish and taking coral; a seminar on the need for an oil spill contingency plan; the development of site specific plans for coastal vegetation plantings for vehicle barriers, erosion control, and wind breaks; and the publication of the bimonthly "Coastal Views" newsletter. The major recommendations to strengthen the program were to improve CRMO coordination with the Marianas Public Lands Corporation, manager of most of the land areas on the islands, and to initiate a joint strategy to develop a land use plan for the island reflective of CRMO's program guidelines.

The Fiscal Year 1983 program was evaluated in December 1983. Final findings will be available in June 1984.

OHIO

Background - CZM and CEIP Programs:

Ohio has not participated in the CZM Program since 1980. At that time, Ohio also lost its eligibility to receive new CEIP funds. Concerns generated by private landowners and industrial and commercial developers over the general issue of land use control and, more specifically, the proposed erosion hazard setback requirements, were the sources of the major opposition to program development and approval. The projects funded under Section 308 awards made prior to December 31, 1980, were administered by the Ohio Department of Energy.

Summary of Evaluation Findings:

In September 1982, an evaluation of the manner in which Ohio implemented its CEIP program was conducted covering the period February 1978 through September 1982. Administration of the CEIP was found to have been a model of sound programmatic judgment as displayed by the rapport the State maintained with local governments and by the number of projects which were implemented or which led to further projects to bring about implementation.

While all awards were beneficial to the State, several projects are of significant value. These include three construction projects, particularly the Port of Lorain floating tire breakwater, and many of the planning projects. Several planning projects led to construction awards funded through CEIP and other Federal programs or State, local or private funds.

Estuarine Sanctuary:Old Woman CreekFacts:

Location:	Erie County, Ohio
Size:	571 acres
Biogeographic Region:	Great Lakes
Acquisition Status:	100% complete

Description:

The Sanctuary is a relatively small but ecologically valuable site. It is one of the few comparatively natural estuaries remaining on the heavily populated shores of Lake Erie. As such, it is of great importance as a control, or baseline area, for measuring the success of coastal land and water management efforts for the Great Lakes biogeographic region. The Sanctuary is the site of the Ohio Center for Coastal Wetlands Studies. It is also part of a Statewide system of sixty-one nature preserves which protects and manages representative examples of significant natural features of Ohio.

Summary of Evaluation Findings:

An evaluation of the Old Woman Creek National Estuarine Sanctuary was held in March 1983 covering the period July 1977 through March 1983. The State was found to have done an exemplary job in both managing and operating

the Sanctuary. Accomplishments included the development and implementation of education programs for the Ohio school system and the public, the development of an interpretive center which provides access to the public while protecting the Sanctuary as a natural resource, the productive research which can assist in future coastal decisionmaking, and the overall development of the Sanctuary as a unified entity.

OREGON

Background - CZM and CEIP Programs:

The second CZM program to receive Federal approval was Oregon, approved in May 1977. The program is based on the Oregon State Land Use Law, the principal statute controlling land and water uses in the State's coastal zone. This legislation established the Land Conservation and Development Commission (LCDC) and its staff, the Department of Land Conservation and Development (DLCD), and gave LCDC authority to adopt Statewide goals and guidelines. Cities and counties are required to develop coordinated comprehensive plans which comply with these goals. The designated boundary includes all coastal counties. The lead agency is DLCD.

The Department of Energy administers the Coastal Energy Impact Program, except for OCS activities which are managed by DLCD. Energy activities having the greatest impact on coastal areas are oil and gas transshipment and the possibility of oil exploration in State waters and the OCS.

Routine Program Implementation (RPI) and Amendments:

A number of changes to the Oregon program were processed by OCRM as RPI's. These included changes to the Land Use Law which gave DLCD authority to periodically review local implementation of approved plans; require changes when necessary; and set a deadline for completion of local plans. Seventeen local coastal programs were also approved.

Major Activities:

The major tasks funded by the FY 1982 and 1983 grants were monitoring and enforcement and acknowledgement of local coastal programs. A special DLCD team was formed to assist in the development and implementation of local programs and thus speed up the process. Of the 42 local programs, 21 were acknowledged by the State, of these 17 were formally approved by OCRM. The remaining four will be reviewed in 1984.

There was much legislative activity during this period. In the November 1982 elections, a measure was defeated by a vote of 384,696 to 320,704 that would have removed the requirement that local programs conform to Statewide goals, returned land use planning to locals, and abolished DLCD, LCDC, and the Land Use Board of Appeals.

Coinciding with the referendum, the Governor appointed a task force to study how the State's land use programs affected economic development. Public hearings were held and a report was completed in September 1982. As a result of the report's suggestion concerning the need to complete local comprehensive plans, LCDC was encouraged to defer more to local solutions for land use conflicts. The report also recommended that LCDC focus on economic development priorities in appropriate areas. In addition, the task force recommended creation of a Land Use Court to replace the Land Use Board of Appeals. The Governor introduced legislation incorporating many of these suggestions. The Legislation, passed in 1983, set a June 1984 deadline for completion and approval of local plans and streamlined and shortened the process for appealing local

land use decisions. The Land Use Board of Appeals was authorized to continue to review contested land use decisions and amendments to approved local plans.

A Memorandum of Agreement (MOA) was signed between DLCD and the U.S. Minerals Management Service which sets out procedures for State review of Federally permitted OCS geophysical permits. The main objective of the agreement is to avoid conflicts between survey and fishing activities by improving notification procedures.

In September 1982, after much negotiation and coordination, the Coos Bay Estuary Management Plan was adopted locally and formally submitted to LCDC. One of the most controversial to come before LCDC, the plan is the result of an effort to involve Federal and State agencies in deciding how to reconcile their regulatory standards with local land use needs. The LCDC reviewed the plan in April 1983 and the remaining portions of the Coos County plan in July 1983. Coos Bay accepted the Commission's findings and is revising the estuary plan.

The State Lands Board (DSL) adopted an estuary mitigation rule which prescribes a formula to determine how much and what kind of mitigation is necessary for permitted fill activities. It also authorized the establishment of mitigation banks and a trust fund to support the banks. DLCD and DSL established procedures for specific mitigation banks in energy impacted estuaries (Columbia River and Coos Bay) under a CEIP grant (see below).

The Oregon Department of Energy and the DLCD entered into an MOA providing for cooperative management of the Estuary Mitigation Revolving Fund established through a CEIP grant. This fund will be used by ports and cities to conduct restoration projects in advance of planned construction of energy facilities.

Major Consistency Issues:

The most controversial consistency issues dealt with OCS oil and gas activities, timber plans, and hazardous materials disposal. In most instances, agreements were reached.

In April 1983, the State submitted formal comments on the Navy's DEIS on Disposal of Decommissioned Defueled Naval Submarine Reactor Plants. Oregon disagreed with the Navy's assertions that disposal of the submarines at the study site, approximately 200 miles west of Cape Mendocino in northern California, would not "directly or indirectly affect land or water use in the coastal zone of any state" nor would it impact the economy of any coastal state. Oregon cited as evidence that the necessary closure of 100 square miles of submarine lands and overlying waters would displace competing uses such as fishing, scientific research, and possible polymetallic sulfide mining and that seabed disposal of nuclear submarines could adversely affect fisheries and tourism. Oregon specifically stated that the final EIS must contain a consistency determination for State review.

In June 1983, Oregon disagreed with the Bureau of Land Management's consistency determination on the South Coast-Curry Timber Management Plan. The State contended that the plan was not consistent with its Statutory Wildlife Policy and, for the same reason, consistency had not been demonstrated with State Planning Goals 5 and 9 which require an analysis of economic, social,

environmental, and energy consequences of proposed actions. Conditions were suggested that would make the plan consistent--one was to recognize that timber operations conflict with the maintenance of the Northern Spotted Owl Habitat and to submit a revised interagency spotted owl management plan. When the Plan was reviewed a few months later, DLCD reaffirmed its inconsistency finding but added conditions which allowed partial implementation of the Plan. However, until the Plan has been revised in order to be consistent, no pre-commercial, harvest, or salvage operations are allowed in specified spotted owl habitat areas.

Summary of Evaluation Findings:

The program was evaluated in February 1982 covering the period February 1981 through February 1982. The program was commended for its accomplishments in establishing a tax incentive program which encourages riparian owners to maintain and enhance shoreline vegetation to benefit fish and wildlife and water quality; completing the documentation of historical estuary changes which increases the ability to conduct detailed estuary restoration and mitigation planning; developing a management plan to protect the Snowy Plover, a shorebird threatened with extinction; facilitating the passage of amendments to ORS 197; and expediting the review of permits.

To strengthen the program, the evaluation findings recommended that the State create a staff team to work more directly with local governments to resolve conflicts preventing local plan approval; improve the compliance of localities with the program by providing technical assistance in how to prepare findings supporting land use decisions; improve interagency coordination and monitoring and enforcement; prepare a legislative program to continue DLCD's role in appealing inconsistent local and State agency regulatory decisions; develop a budget strategy for State funding of the "coastal team"; and improve coordination of CZM and CEIP programs.

Responses to these recommendations were examined during the August 1983 evaluation which covered the program period February 1982 through August 1983. Areas of progress included the increased rate of acknowledgements of local plans, the creation of a low-cost permit tracking system, the development of a mitigation banking system, and amendments to the State Land Use Law. The findings noted that further improvements could be made that would strengthen the program. The DLCD must continue its efforts to complete the acknowledgement of local programs. In addition, DLCD must continue to work with other State agencies to conform regulations to the Statewide planning goals. Other concerns include monitoring of interim actions and mitigation planning and reporting.

Estuarine Sanctuary:

South Slough

Facts:

Location:	Coos County, Oregon
Size:	4,476 acres
Biogeographic Region:	Columbian
Acquisition Status:	95% complete

Description:

The site was the first Sanctuary funded by the National Estuarine Sanctuary Program. Enabling researchers to study both "natural and human processes," this Sanctuary protects freshwater and saltwater marshes, an island covered with a climax forest, numerous species of plants and animals, and, in addition, a prehistoric Indian midden, an abandoned gold mine, and the sites of old railroad logging dumps. The Sanctuary is managed by the Division of State Land Use and the South Slough Estuarine Sanctuary Management Commission, which represents several State agencies, local agencies, the private sector, and the Oregon University system.

Summary of Evaluation Findings:

The operation and management of the Sanctuary was evaluated in August 1983 covering the period from Fiscal Year 1976 through July 1983. Through the activities of the Oregon Division of State Lands, the State has operated the Sanctuary for purposes of research, public education, and limited use recreation. As a result of program implementation, accomplishments have been made in the development and implementation of education programs for the Oregon school system and the public. Problems remain in the development of a Sanctuary management plan, in the development of a unified scientific research program, and in the State's support of the Sanctuary.

Pennsylvania

Background - CZM and CEIP Programs:

The Pennsylvania Coastal Zone Management Program (PCZMP) was approved on September 30, 1980. The program encompasses 63 miles along Lake Erie and 57 miles along the Delaware River; its width varies from 900 feet along stretches of Lake Erie and 1/8 mile along the urban areas in the Delaware estuary to three and one-half miles in Bucks County including floodplains of the Delaware and Schuylkill Rivers. The State authorities which form the basis of the PCZMP include the Dam Safety and Encroachment Act, Floodplain Management Act, Bluff Recession and Setback Act, Clean Streams Act, as amended, and the Air Pollution Control Act, as amended. The Department of Environmental Resources (DER) is the lead agency for implementing, administering, and enforcing the PCZMP. The Coastal Zone Management Division is responsible for monitoring and evaluating activities relating to coastal zone management and ensuring compliance with the program's enforceable policies. An Executive Order highlights the importance of State agencies complying with enforceable coastal policies.

Pennsylvania's Coastal Energy Impact Program is administered by the Department of Community Affairs (DCA). The energy activities anticipated to produce significant impacts on the disparate State coastal areas by 1985 are: coal transfer, transshipment, and storage facilities--Delaware Estuary (Port of Philadelphia) and Lake Erie; expansion of refineries--Delaware Estuary; and natural gas drilling off the coast of Lake Erie.

Routine Program Implementation (RPI) and Amendments:

In February 1983, Pennsylvania modified its program to incorporate minor changes to the variance section of the regulations promulgated under the Bluff Recession and Setback Act. These changes involved the removal and clarification of language in the Act and more detailed guidance to municipalities on standards for implementing the Act. These changes were found to be RPI's under the Federal regulations.

Major Activities:

As part of an effort to revitalize the Lake Erie waterfront and to stimulate economic recovery for that area, the PCZMP provided seed money to the Erie Employment Task Force (EETF) to explore the possibility of Canadian and U.S. firms locating warehouse and satellite offices along the Lake, specifically the area around the City of Erie. A seminar was conducted in Toronto in February 1983 to discuss the concept of Foreign Trade Zones (FTZ) and U.S. investment by Canadian interests. Approximately 24 Canadian firms were identified for further contact by Erie sales teams. The EETF worked with the Free Zone Authority, the Appalachian Regional Commission, and the Erie-Western Pennsylvania Port Authority to establish an FTZ in Erie. The EETF also is coordinating with the Pennsylvania DCA and the Sabre Foundation to establish a State Enterprise Development Zone (SEDZ) in the City of Erie. SEDZ's are areas targeted for stimulation, creation, and growth of business, industries, and employment, and to enhance housing, community facilities, and amenities for the disadvantaged. To be designated, areas must meet "distressed population areas" criteria according to HUD's Urban Development Action Grant minimum standards.

Efforts also were underway to improve the overall economic base of counties in the Delaware Estuary coastal zone area. Under a PCZMP grant, five sites located in Delaware County were identified for future industrial uses. The study recommended economic, energy, and water conservation practices for the sites. Several developers are considering purchasing the sites and are amenable to using the innovative energy options recommended by the study.

A computer model was completed which will assist the DER in evaluating water obstructions permit applications. The model graphically displays and predicts changes that a shoreline will undergo following the placement of a shoreline stabilization structure (i.e., groin, jetty). The model has the capability to determine appropriate size, distance, and location of structures in order to get optimum results. It also is used to negotiate mitigation actions. The PCZMP uses the model as a technical assistance aid for providing information on erosion and related activities to property owners.

Using 306 funds, the Pennsylvania Fish Commission developed a strategic management plan for fishing and boating activities in the Lake Erie coastal zone--the first attempt at a long-term fishing and boating management program for the Pennsylvania portion of Lake Erie. In developing the plan, the Commission used literature reviews, public opinion survey results, and personal interviews with user groups, and State and local officials. The plan includes a series of alternative actions designed to improve the overall economic impact of the sport and commercial fishery on the area. It also stresses the need for improving access and promotional literature.

Regulations to implement Section 302 of the Pennsylvania Floodplain Management Act were promulgated and became effective on October 15, 1983. The regulations affect highways or obstructions constructed, owned, or maintained by the Commonwealth, by a political subdivision of the Commonwealth (including any county, municipality, district, or authority), or by a person engaged in rendering a public utility service, and applies to areas delineated as 100-year floodplains on maps promulgated by the Federal Emergency Management Agency.

CEIP funds were used to assist the construction of the Elk Creek Public Access Project. This 45 acre site along the shore of Lake Erie was donated by the Pennsylvania Electric Company, which is building a coal-fired electric generating station adjacent to the site. CEIP also funded site improvements at the expanded McClure Riverfront Park. The additional land was acquired by a major oil company and donated to Marcus Hook Borough to provide public access to the Delaware River where most of the waterfront land has been lost as a result of the continued expansions of the refineries, their oil tank farms and terminals. The City of Chester also received funds to construct a parking lot and boat ramps to provide fishing access to the Delaware River.

Summary of Evaluation Findings:

In June 1982, an evaluation of the PCZMP was held covering the period May 1981 through June 1982. Accomplishments included the work of the Delaware Estuary Urban Waterfront Action Group in serving as a forum for pre-permit conferences with developers and Federal, State, and local agencies; the adoption of bluff erosion setback ordinances by the eight Lake Erie townships; the development of a model monitoring mechanism to improve enforcement of the Bluff

Recession and Setback Act at the local level; and the development of a strategy for monitoring the DER regulated activities which impact coastal resources.

Recommendations for improving the PCZMP focused on the need for regulations under the Floodplain Management Act and the development of a strong public awareness component.

PUERTO RICO

Background - CZM and CEIP Programs:

The Puerto Rico Coastal Management Program (PRCMP) was approved in two stages. The approval of the plan for the Island of Culebra as a segment occurred in April 1977. The Culebra plan was then integrated into a Commonwealth program based upon the approval of the PRCMP in September 1978. The Program is based on the island-wide land use plan established by the Puerto Rico Planning Board and adopted by the Governor in June 1977. The boundary of the island coastal zone extends inward 1,000 meters from the shoreline and farther inland in places where it is necessary to include an important coastal natural system. The boundary includes all offshore islands and waters within the three mile limit. The Department of Natural Resources (DNR) is the agency designated to administer the coastal program.

The DNR also administers the Coastal Energy Impact Program. Past activities were limited to planning for the consequences of energy development, especially the conversion from oil to coal powered electrical generation.

Routine Program Implementation (RPI) and Amendments:

Three changes to the PRCMP were approved by OCRM as RPI's: (1) the deletion of Tourmalines Reef Reserve from the list of areas recommended for consideration as Natural Reserves because it lies outside the offshore limits established by statutes for the PRCMP; (2) the addition of the Cano La Boquilla Reserve, in Mayaguez, Cibuco Swamp Reserve, in Vega Alta-Vega Baga, and Laguna Cartagena Reserve, in Lajas to the list of areas recommended for consideration as Natural Reserves; and (3) a change to the coastal zone boundaries to include Laguna Cartagena hydrographic basin in the southwest sector of Puerto Rico.

Major Activities:

The PRCMP conducted work in several areas--permit streamlining, planning for special areas, natural reserve management, hazard reduction plans, and dune and mangrove protection and restoration. The Commonwealth has been working to better coordinate its permitting and shorten the review time for permits. The special area and natural reserve planning and improvement efforts have resulted in development of detailed data bases and has enhanced decision making. The hazard reduction planning has resulted in the relocation of many homes out of the floodplain. Dune and mangrove restoration manuals were prepared during FY 1982-1983. The dune restoration manual includes information regarding dune stabilization and enhancement which are used in developing permit conditions. The mangrove restoration manual describes mangrove planting and restoration projects including planning costs analysis, and execution and monitoring procedures.

CEIP funds were used to develop an oil spill atlas that identifies the most vulnerable shoreline segments, recommends boom sites, and includes access points and limitations to enhance the Commonwealth's response to oil spills.

Summary of Evaluation Findings:

The program was evaluated in April 1982 covering the period June 1981 through April 1982. Significant accomplishments noted in the findings were the activities of the Rangers Corps in monitoring and enforcement, and the development of area-specific plans for hazards management in the floodplains. To strengthen the program, the findings recommended institutionalizing a permit streamlining plan, completing the Commonwealth's special planning area plans, promulgating new and expanded wetlands regulations, promulgating off-road vehicle regulations, and completing an environmental education program.

In May 1983, the program was evaluated again, covering the period May 1982 through May 1983. Significant accomplishments noted in the findings included DNR's initiatives in managing conflicts due to off-road vehicle (ORV) use; continued operational improvements including round-the-clock surveillance by the Commonwealth's Ranger Corps; efforts directed toward improving the procedures and timeliness for designation of Natural Reserves and Special Planning Areas; continued planning for managing flood hazard areas; completion of coastal education materials and teacher orientation concerning coastal issues; completion of two useful and effective CEIP studies; and a study to identify sand deposit sites and determine the cost/benefit of extraction, including an assessment of ecological and environmental damage.

To strengthen the program, the findings recommended streamlining and institutionalizing the Federal consistency element of the program, accelerating the production and implementation of special planning area management plans, timely designation of natural reserves and the subsequent preparation of management plans, and developing and implementing a plan for shifting financial support of the program to the Commonwealth.

Estuarine Sanctuary:

Jobos Bay

Facts:

Location:	Aguirre, Town of Salinas (southwest coast of Puerto Rico)
Size:	2,500 acres
Biogeographic Region:	West Indian
Acquisition Status:	100% complete

Description:

The Sanctuary consist of 17 islets (155 acres), known as Cayos Caribe, and 2,345 acres of mangrove channels, lagoons, and territorial waters. The principal plant associations of the Sanctuary consist of mangroves and associated salt flats. The mangroves provide a habitat for a large variety of organisms, as well as nesting sites for both native and migratory birds. Hypersaline lagoons and salt flats occur inland from the mangrove forest.

The Sanctuary contains a number of the other habitats interrelated with the mangrove system in the submerged areas. Large, well-developed meadows of seagrasses occupy most of the shallow bottom just offshore of the fringe. Many species of fish and invertebrates, and larger animals, such as sea turtles and manatees, are found in the seagrass beds. The Sanctuary also includes several coral reefs within its boundaries. The designation of this area as a Sanctuary will ensure long-term natural productivity and continued ecosystem functioning of a significant portion of Puerto Rico's second largest estuarine zone.

Summary of Evaluation Findings

In May 1983, the functioning of the Sanctuary was reviewed from its establishment in September 1981. During that period, staff had been hired and preliminary plans drawn up for a visitor's center. Other activities during the period included (1) completion of the design of a preliminary trail system for Cayos Caribes to include boardwalks, an observation tower, and a nature trail; and (2) a series of seminars presented to the colleges and public schools in the area for the purpose of promoting the Sanctuary as an education project.

RHODE ISLAND

Background - CZM and CEIP Programs:

The Rhode Island Coastal Management Program (RICMP) was approved in May 1978. The lead State agency is the Office of the Governor. The program is based on the Rhode Island Coastal Resources Management Act which was passed in 1971. Key agencies which are involved in administration of the program include the Coastal Resources Management Council (CRMC), the Department of Environmental Management (DEM), the State Planning Office, and the Coastal Resources Center at the University of Rhode Island. The coastal boundary extends inland up to one mile from mean high water.

The Governor's Energy Office administers the Coastal Energy Impact Program. The major energy impact faced by the State is OCS oil and gas activities. The abandoned Quonset Point/Davisville Navy Base in North Kingston serves as the primary OCS onshore service support base for the Baltimore Canyon and Georges Bank oil and gas exploration and development efforts.

Routine Program Implementation (RPI) and Amendments:

No changes to the RICMP were processed during FY 1982-1983.

Major Activities:

Revisions to the RICMP were adopted on June 22, 1983. These revisions contain all the CRMC policies and regulations, as amended, in a format that is easy to follow and tailored to the needs of administering the RICMP. They incorporate criteria for land use decisions to be based on adjacent water quality. These revisions replace Chapters 1 through 5 of the existing Program.

During this period, implementation funds were used for the preparation of Special Area Management Plans for the six ponds along the south shore and the upper Narragansett Bay, continued designation of public access rights-of-way, and continued funding for CRMC and DEM personnel who provide monitoring and enforcement staff support to the program.

Summary of Evaluation Findings:

An evaluation of the RICMP was held in December 1981 covering the period January through December 1981. Accomplishments highlighted included the shift of CRMC emphasis from all permitting actions, including those of minimal impact, to major permitting actions, and substantive issues concerning the State's coastal resources; rights-of-way identification and designation; streamlining of permit processing; completion of an aquaculture management plan; significant progress in developing special area management plans for the salt ponds; and the completion of the Rhode Island Dredging Needs Survey, 1980-1985. The recommendations of the evaluation suggested reductions in administrative costs, conducting a workshop on Federal consistency authorities and procedures for State personnel, and enhancing communication among the agencies involved in the Program.

An expanded evaluation was held in April 1983 covering the period January 1982 through April 1983, and assessing the CEIP and the Estuarine Sanctuary as well as the Section 306 program. Particularly noteworthy 306 accomplishments were the development of substantive and procedural revisions to the program and the salt ponds special area management programs.

Recommendations for strengthening the program included focusing more on the identification of priority coastal issues by the CRMC; setting deadlines for review of major applications by the CRMC (similar to those already set for minor applications); conducting Federal consistency workshops to improve understanding among State and Federal agencies; and identifying legal responsibilities for maintenance and liability associated with public rights-of-way.

The evaluation found that the CEIP-funded projects had addressed the onshore impacts of offshore oil development activities. The State was prepared to respond to development activities on the OCS and mitigate impacts from offshore OCS activities. These studies provided local governments data to address other problems associated with development pressures by providing information useful in local planning and zoning.

Estuarine Sanctuary:

Narragansett Bay

Facts:

Location:	Newport County, Rhode Island
Size:	1,629 acres
Biogeographic Region:	Virginian
Acquisition Status:	99% complete

Description:

The Sanctuary consists of two islands and the portion of a third lying in the center of the bay. The bay itself extends for 25 miles from Newport on the ocean to Providence. With the assistance of the National Estuarine Sanctuary Program, almost all of Patience Island was purchased in 1980. It was combined with State-owned lands and waters on Hope and North Prudence Islands to form the 1,629-acre Sanctuary, the first of its kind (Virginian classification which extends from Cape Cod to Cape Hatteras) in the National Estuarine Sanctuary Program. The islands contain the largest salt marshes in Rhode Island and the largest bird rookery in the Northeast. These marshes are generally in an undisturbed natural condition, or were once developed but are gradually returning to a natural state which the Sanctuary protection will encourage.

Summary of Evaluation Findings:

At the time of the evaluation, the draft management plan for the Sanctuary had been completed and a Sanctuary Advisory Committee established. To improve estuarine sanctuary management, it was recommended that the State develop research proposals with application to coastal management and decisionmaking; ensure that the national character and significance of the Sanctuary is reflected in all interpretive materials; and develop a funding and management transition strategy for the Sanctuary as Federal funding is phased out.

SOUTH CAROLINA

Background - CZM and CEIP Programs:

The South Carolina Coastal Management Program (SCCMP) was approved in September 1979, and is based, in large part, on the South Carolina Coastal Management Act of 1977 (SCCMA). The Act establishes a permanent South Carolina Coastal Council (SCCC), provides for the development and administration of a comprehensive Coastal Management Program, sets up a permitting process for activities occurring in the four "critical areas" of the coastal zone (tidelands, coastal waters, beaches, and primary oceanfront sand dunes), and provides a mechanism for State and local agency consistency with the State's approved Coastal Management Program throughout the coastal zone.

The South Carolina Coastal Energy Impact Program is located in the Governor's Office. According to the State's five-year CEIP strategy, the following energy activities have been identified as producing the greatest impacts on the State's coastal areas: the transport, transfer, and storage of fossil fuels; OCS exploration and development; peat mining; alternative sources of energy; and energy facility siting, particularly LNG and electric generating plants.

Routine Program Implementation (RPI) and Amendments:

In May 1982, South Carolina modified its program by incorporating the Hilton Head Special Area Management Plan (SAMP). The plan had been requested by Beaufort County and contains policies designed to maintain water quality, protect salt and freshwater wetlands and dunes, and to provide for adequate public access to the shore. This change was found to be an RPI under the Federal regulations.

Major Activities:

Shoreline hazards were a major element in the SCCMP's activities during FY 1982-1983. The SCCC completed the Surfside Beach Shoreside Management Study which was designed to address expected future hazard and erosion problems by assuring maintenance of natural protective features. The study recommended the creation of a shore protection ordinance establishing a setback from the existing critical areas, and requiring property owners to protect and maintain the dune system which protects their property. The plan has been adopted by the City. A Comprehensive Shoreline Management Plan for Folly Beach was completed and adopted by the Council. The plan includes an erosion control line assessment and establishes specific performance standards for erosion control devices. The SCCMP also began the development of a shoreline management plan for the Myrtle Beach area.

The SCCMP funded computer runs of the National Weather Service's SLOSH (Sea, Lake, and Over Land Surges from Hurricanes) model which had been adapted to the South Carolina coast. The model, which can predict the extent of flooding in the event of a hurricane, was run for 186 hypothetical storms and focused on 15 coastal areas. Staff of the Water Resources Commission attended a training session at the National Hurricane Research Laboratory in Florida to learn to translate the results of the model runs into a form useable by local

emergency preparedness personnel to assess the adequacy of current evacuation plans.

The SCCMP conducted several activities designed to increase the public's awareness and understanding of coastal issues. In February 1982, the SCCC hosted a conference on coastal hazards sponsored by NOAA's National Ocean Survey, the U.S. Geological Survey, the Federal Emergency Management Agency, and the Corps of Engineers. In September 1983, the South Carolina CEIP sponsored a conference on coastal oil spills. The purpose of the conference was to acquaint local, regional and State officials and other interested parties with the latest methods of control, clean-up, and mitigation measures for oil spills in a coastal environment. Conference participants were provided a demonstration of a U.S. Coast Guard-Navy oil spill simulation and clean-up drill in the Cooper River. The conference agenda included presentations by specialists on topics such as: development of an oil spill trajectory model for Charleston Harbor; the effects of oil on coastal ecosystems; the State's oil spill response capability; mitigating oil spill damage; and private industry clean-up capacity and safety measures. More than 100 people from the public and private sector attended the conference.

In April 1983, the SCCMP, the Federal Emergency Management Agency, and the South Carolina Water Resources Commission sponsored an information workshop for local officials and the general public regarding the new regulations under the Flood Insurance Program. The SCCMP also posted 100 signs in public areas throughout the coast noting the location of the 100-year floodplain in an effort to increase public awareness of hazards areas.

Major Consistency Issues:

In the fall of 1982, the South Carolina Coastal Council sent a letter to the Department of Energy (DOE) requesting a consistency determination on the proposed start-up of the L-reactor at the Savannah River plant in Aiken County. The plant, which produces weapons grade plutonium, was deactivated 15 years ago. Although the plant is outside the coastal zone, there were very serious concerns about the contamination of major shellfish beds downstream and the impact on the drinking water in coastal Beaufort County due to the increased radioactivity resulting from the plant's discharged waters and resuspension of contaminated sediments.

The DOE maintained that a consistency determination was not required. South Carolina later joined a suit brought by the Natural Resources Defense Council, among others, against DOE claiming that the environmental assessment prepared for the project was inadequate and that a full environmental impact statement must be prepared before the plant could be reactivated. The suit is still pending and a DEIS for the project is being developed.

Summary of Evaluation Findings:

An evaluation of the SCCMP was held in January 1982 covering the period November 1980 through January 1982. Strong program implementation efforts were found in the areas of beach erosion, post-disaster planning, and oceanfront development standards. The findings included recommendations for the improvement of technical assistance to localities on erosion and hazard mitigation, the initiation of new efforts to develop standards and policies for

post-disaster reconstruction, the establishment of work priorities over the next three to five years, the improvement of public involvement in the Coastal Council's activities, and the review of management strategies and policies with regard to the impoundment of coastal lands.

The SCCMP was evaluated in November 1983. Final findings will be available in June 1984.

TEXAS

Background - CZM and CEIP Programs:

The Texas Coastal Program (TCP) was scheduled for approval in 1981. The TCP was being developed by the Natural Resources Division of the Texas Energy and Natural Resources Advisory Council (TENRAC) and was to have been based on existing State laws including the Coastal Public Lands Management Act, the Texas Water Code, the Dune Protection Act, and the Coastal Wetlands Acquisition Act. The TCP would have been implemented through the direct State control technique provided by existing State permits, leases, and other certifications. In a letter dated April 30, 1981, then-Governor Clements indicated that the State of Texas would not be submitting its draft program document for OCZM's review and approval. OCZM officially terminated the State's grant on May 4, 1981, and allowed a 30-day close-out period. During the 1983 legislative session, a bill was passed which abolished the TENRAC and transferred some of its energy advisory functions to other agencies.

Although Texas is no longer eligible for participation in the Coastal Energy Impact Program, the termination does not affect the \$9.7 million in CEIP grants and \$25 million in CEIP loans awarded prior to May 1, 1981. The CEIP is administered by the Governor's Office of Planning and Intergovernmental Relations (formerly the Budget and Planning Office). Unlike most states, Texas by regulation has limited the use of its CEIP grant funds to either planning or the mitigation of environmental or recreational loss. All CEIP funded public works projects in Texas have been supported by loans.

Summary of Evaluation Findings:

OCRM undertook a detailed evaluation of the Texas CEIP Program in January 1983. The timing of the evaluation permitted the review team to examine projects that were either completed or in the final stages of construction. Typical CEIP projects include the construction of fishing piers in Port Arthur, Port Aransas, Fulton, and Nueces County; acquisition of 482 acres of floodplain land for parks and passive flood control in Harris County; acquisition of wetlands by the City of Portland; and public beach improvements in Bay City, Beaumont, Gregory, Kingsville, and Rockport. The reviewers were particularly impressed by the high quality of the many recreational and beach access projects funded by the CEIP, with only minor concerns being raised about the administration of the program at the State level.

VIRGIN ISLANDS

Background - CZM and CEIP Programs:

The Virgin Islands Coastal Zone Management Program (VICZMP) received Federal approval in June 1979. The Program is based on the Virgin Islands Coastal Zone Act of 1978 (VICZA). The VICZMP was designed to manage all development activities in the Virgin Islands coastal zone, which includes all of St. Thomas, St. John, and St. Croix Islands, all offshore islands and cays, and the territorial sea. The VICZA also established the organizational structure for the VICZMP by designating the Department of Conservation and Cultural Affairs (DCCA) as the lead administrative agency and creating a Coastal Zone Management Commission to serve as the decision-maker for major permits.

The Coastal Energy Impact Program is administered by the Federal Programs Office. The islands face energy impacts from the Hess Oil Refinery, the largest in the western hemisphere.

Routine Program Implementation (RPI) and Amendments:

Minor changes to the VICZA were processed by OCRM as RPI's. The Act was modified to approve development by the West Indian Company, Ltd., within the first tier of the Virgin Islands coastal zone.

Major Activities:

Major tasks funded under the coastal program included establishment of a ticketbook system for assessing fines for violations occurring on land, expansion of the registration system for uses other than boating, design of a system for renewing submerged lands leases and calculating new lease fees, development of mooring plans, and preparation to assume responsibility for implementation of the Territorial Earth Change Law in the inland portion of the islands, including the amendments to accomplish it.

CEIP funds are being used to conduct an oil spill vulnerability study and port expansion study.

Summary of Evaluation Findings:

The program was evaluated in February 1983 covering the period October 1981 through February 1983. The findings indicated that achievements in coastal resource management had occurred through improved permit processing and increased pre-application conferences with developers, prevention of illegal sand removal, cleaning-up of the beaches, completion of the Benner Bay Water Use Plan, completion of guidelines for the Mandahl Bay and the Vessup Bay Areas of Particular Concern (APC's), and providing priority consideration for coastal dependent uses such as the facility for berthing larger cruise ships in the St. Thomas Sub-Base area and the containerport facility on St. Croix. Other accomplishments included planning for the historic Enighed Library on St. John, renegotiating old submerged land leases, opening a part-time office on St. John, working on mooring plans for the major bays on St. Thomas with ad hoc citizens committees, and coordinating with Federal agencies on issues or potential VICZMP Federal consistency conflicts.

While achievements were made, progress in many areas was impeded because Federal funds were withheld based on a 1981 Inspector General's audit. The Territory had to repay almost \$30,000 in unallowable costs. The Territory was advised that additional funds would be withheld if significant improvements tasks were not completed on time (as stated in the terms of the grant). The most important and timely recommendations for strengthening the VICZMP were to fill staff vacancies; assure full-time legal assistance; institutionalize the program; complete work tasks, planning projects, and printing of the Developers Handbook; and continue improvement of formal and informal Federal consistency coordination.

VIRGINIA

Background - CZM and CEIP Programs:

In July 1982, Virginia, which had not participated in the CZM Program since April 1979, was found to be making satisfactory progress toward the development of a coastal management program and therefore eligible to receive CEIP funds.

OCRM's review of the State's progress was precipitated by a May 12, 1982, letter from Governor Robb stating Virginia's intention to develop an approvable coastal program. In this review, OCRM found indications of progress including the establishment of the Maryland and Virginia Legislative Chesapeake Bay Commission and the Executive Bi-State Working Committee on the Bay, the passage of the Coastal Primary Sand Dune Act, an amendment to the Wetlands Act extending State control to non-vegetated wetlands, amendments to the Shore Erosion Control Act establishing a Shore Advisory Service and the Public Beach Conservation and Development Act, and the establishment of the Virginia Coastal Resource Management Review and Evaluation Process. In late 1983, the State began to prepare a program document for submission to the Office of Ocean and Coastal Resource Management.

Based on the finding of satisfactory progress under Section 303 of the Federal Coastal Zone Management Act, the State was awarded \$414,426 in CEIP Section 308(c) funds. The projects funded under this award included the design of a waterfront park in Newport News, an assessment of the impacts of dredging for coal ports in the Elizabeth River, and support for the construction of artificial reefs to mitigate coal export development.

WASHINGTON

Background - CZM and CEIP Programs:

The Washington Coastal Zone Management Program (WCZMP) was approved in June 1976, distinguishing it as the first State to have a federally-approved CZM program. It is based on the 1971 Shoreline Management Act (SMA). Under the Act, the coastal boundary is designated in two tiers. The first tier includes all the State's marine waters, lakes over 20 acres, and streams with a mean annual flow of 20 cubic feet per second or more, and their associated wetlands. The second tier includes the coastal county lands outside the first tier. The WCZMP is a networked management program involving several State agencies, 15 counties and 36 cities. The Department of Ecology (DOE) is the lead agency. The 51 local jurisdictions have authority under the SMA to issue or deny permits for activities within the first tier management area defined above. Local actions are guided by locally developed, State-approved Shoreline Master Programs (SMP).

The DOE administers the Coastal Energy Impact Program in Washington. Major energy impacts in the State are oil and coal transshipment and current and potential OCS support facilities.

Routine Program Implementation (RPI) and Amendments:

No changes to the WCZMP were processed during FY 1982-1983.

Major Activities:

The Fiscal Year 1982 work program continued support for local governments and State agencies with important coastal management functions. The DOE focused on providing technical assistance and performing its monitoring and enforcement responsibilities. Tasks under the FY 1983 work program included a review of adjacent lands management, and an update of local shoreline master programs. Highlights of these projects and other issues follow.

During FY 1982, the WCZMP developed an adjacent lands guidance strategy which was intended to clarify the relationship and application of authority to lands adjacent to the shoreline. The State worked with localities to review and improve their present adjacent lands management policies. The review was completed during FY 1983 and recommendations were provided to localities where an update was needed.

A review of the first 10 years of SMA implementation was initiated by DOE during FY 1983. The review focused on the performance of local shoreline master programs, public access, wetlands, and public perception of the program. DOE will present its findings and recommendations to the 1984 legislature.

In April 1982, Governor Spellman accepted the recommendation of the State Energy Facility Siting Evaluation Council (EFSEC) to deny an application by the Northern Tier Pipeline Company to build a 1,500 mile pipeline to transfer Alaskan crude oil from Port Angeles, Washington, to Clearbrook, Minnesota.

Environmental concerns were cited as the major reason behind this decision which was reached after reviewing over 40,000 pages of testimony from over 175 witnesses. The decision did not rule out the possibility of approving an alternate overland pipeline in the future.

In June 1982 DOE signed a Memorandum of Agreement (MOA) with the U.S. Minerals Management Service that gave the State a formal role in reviewing Federal permits for geophysical and geological surveys to assess the potential for oil and gas development off the Washington coast. The MOA was necessitated by misunderstandings between fishermen and oil and gas explorers that resulted in damaged offshore fishing gear and lost crabpots. The SMA was amended during 1983 to require a State permit to conduct geophysical surveys in State marine waters.

The Washington Public Ports Association and DOE published the "Environmental Impact Analyses of the Potential Coal Export Facilities in Washington." This was an interagency effort to anticipate and resolve management problems associated with siting coal facilities. The environmental impacts of likely specific sites were evaluated.

The Grays Harbor Estuary Management Plan DEIS was published by the State and OCRM in July 1983. This special area management plan has attracted nationwide interest as an example of consensus-based planning by Federal, State, and local entities to manage future development in a sensitive estuary. The plan will guide future decisions related to the estuary to meet multiple goals: to address the region's social and economic needs; to protect the estuarine ecosystem and its recreational natural values; and to provide a measure of predictability to and minimize conflict among development interests, environmental interests, and State and Federal agencies. Well-attended public hearings were held in September 1983 and over 400 comments were received on the DEIS. A task force is revising the plan to respond to public comment.

The DOE initiated a project to protect shellfish beds from contamination--a widespread problem in Puget Sound and other estuaries. A strategy to abate chronic sources of pollution was implemented in the watersheds surrounding Burley Lagoon and Henderson Inlet. The DOE will prepare a follow-up report that will recommend improvements in water quality standards for the State's estuarine waters when shellfish resources are significant.

Local governments began to process amendments to their master programs to comply with new DOE guidelines on managing aquaculture activity.

The State used CEIP funds to conduct the following studies and projects: OCS rig planning and impact mitigation, crude oil marine terminal and pipeline impact identification, hydropower permit review, and coal port environmental impact mitigation. The DOE also participated in a study by the EFSEC of an acceptable inland crude oil pipeline route as an alternative to the route proposed by the Northern Tier Pipeline Company and turned down by Governor Spellman in April 1982.

Summary of Evaluation Findings:

The program was evaluated during February 1982 covering the period February 1981 through February 1982. The program was found to be making satisfactory progress, and achievements were mentioned in several areas: the development of a strategy for improving monitoring and enforcement, the development of a comprehensive living marine resource strategy for coastal fisheries management, the handling of the Northern Tier Pipeline proposal, and public access (the Rushton Way Plan). The findings also recommended that the program could be improved if the State would undertake a comprehensive review of its program results during the last 10 years and make recommendations to the legislature for improvements and direction; examine all local master programs and update them as needed to address emerging issues; work with local governments and State agencies to improve management of lands adjacent to the shoreland area; and implement the monitoring and enforcement strategy.

In February 1983, OCRM evaluated WCZMP implementation for the period covering February 1982 through February 1983 and CEIP implementation for the period covering June 1977 through February 1983. The CZM program was commended for the progress made in monitoring and enforcement, particularly the disposition of unpermitted activities; completion of four projects examining the boundaries of State-owned aquatic lands; and evaluation of activities during the 10 year existence of the SMA. In previous evaluations, OCRM identified several major concerns with the implementation of the WCZMP, including effective monitoring and enforcement of the WCZMP, resolution of the "adjacent lands" issue, and future direction of the WCZMP. In response, DOE developed multi-year strategies and plans to address these concerns. OCRM recommended that DOE continue to carry out, as rapidly as possible, its plans and strategies for: improved monitoring and enforcement of the WCZMP by ensuring that local governments detect violations of substantial development permits and that DOE's response to violations is meaningful and prompt; the review of ordinances to demonstrate compatibility with the local SMP, and resolutions of conflicts; and the review of DOE's performance in the implementation of major aspects of the SMA to determine future activities.

The findings indicated that CEIP funding had been used effectively. Major uses were for impact analysis, the development of mitigation strategies, the development of baseline biological resource information, State OCS participation, and program implementation. The major uses of funds were directed toward the impacts of the following five categories of energy activities in Washington: crude oil marine terminals and pipelines, OCS oil activities, nuclear power, coal port development, and hydropower facilities. With the exception of OCS activities, entirely a DOE effort, State agencies and local governments used CEIP funds to meet their responsibilities under State and local laws and regulations.

Estuarine Sanctuary:Padilla BayFacts:

Location:	Skagit County, Washington
Size:	11,612 acres
Biogeographic Region:	Columbian
Acquisition Status:	43% complete

Description:

The Sanctuary consists of extensive tidal marshes and upland areas. Its eelgrass beds, which are perhaps the largest within the continental United States, are primary habitats for substantial numbers of waterfowl. On an average winter day there are over 50,000 ducks in Padilla Bay, including scamps, golden eyes, buffleheads, and the endangered canvasback. Padilla Bay is the most important habitat in the Northwest for the scarce black brant duck, since this species is dependent on shallow, coastal bays with a supply of eelgrass.

Summary of Evaluation Findings:

The Sanctuary was not evaluated during the biennium. An evaluation is scheduled for June 1984.

WISCONSIN

Background - CZM and CEIP Programs:

The Wisconsin Coastal Management Program (WCMP) was approved in May 1978. The Bureau of Coastal Management in the Department of Administration is the lead agency for implementing the program which includes Section 306, Section 308 (CEIP) and Section 315 (Estuarine Sanctuaries). Regulatory responsibilities (33 are cited) are primarily carried out through the Department of Natural Resources, the Department of Transportation, the Public Service Commission and the counties.

The gubernatorially appointed Wisconsin Coastal Management Council (WCMC) composed of 25 members including representatives from the Legislature, State agencies, local officials, tribal governments, citizens and the University, oversees program implementation and advises the Governor on State policies affecting the Great Lakes. The Wisconsin program has a strong policy of State/local partnership in coastal resources management.

Routine Program Implementation (RPI) and Amendments:

No changes to the WCMP were processed during FY 1982-1983.

Major Activities:

As a result of a change in Wisconsin's dredge spoil disposal policy which now permits the lake disposal of clean material under certain conditions, the WCMP cooperated with the Corps of Engineers in two projects using dredge spoil for beach replenishment--Kewaunee Harbor on Lake Michigan and Wisconsin Point on Lake Superior. One year after the nourishment at Kewaunee was completed, monitoring of the area showed no negative impact on the natural environment and that the beach land had maintained a level of one foot above the lake. A third project at Oak Creek south of Milwaukee was undertaken jointly with the Wisconsin Electric Power Company (WEPCO). As a result, WEPCO found alternative dredge spoil disposal sites and uses for spoil resulting in substantial savings for the company as well as environmentally sound spoil disposal.

The WCMC has had the lead in a study of the issues associated with the interbasin export of Great Lakes water. The need for the study was based, in part, on the Powder River Coal Company's interest in using Great Lakes' water to operate a coal slurry pipeline from Gillette, Wyoming, to either Milwaukee or Superior, Wisconsin. In May 1982, an Interbasin Transfer of Water Conference was held which found that although technically feasible, except in the case of energy projects, the large scale withdrawal of water from the Great Lakes or other basins is not now economically feasible without massive Federal subsidies; that if water were transferred, a charge should be paid for the water as a depletable resource in addition to the cost of the transfer system; that affected States should reach agreement on transfer prior to the intervention of the Federal Government; and that regional institutions must be developed to address the water transfer issue. The proceedings of the conference were published by the WCMP.

Two other reports published by the WCMP were "Public Rights to Great Lakes Beaches" which made the case that despite State riparian law, the Wisconsin public does have rights to the use of the shoreline, and "The Great Lakes: A Balanced Approach for the 80's." Using illustrations, data tables, and text, the latter report describes program activities affecting natural resources, urban waterfronts, ports, erosion damage reduction, land and water regulation, water quality, energy impacts, tribal governments, and public education efforts on Great Lakes issues.

CEIP funds were used to enhance public access to the shoreline in Kewaunee where floating piers were used to provide dockspace and erosion control, and in Ashland where a boardwalk was constructed along the Phase III portion of the Ashland Lakeshore Trail. On Lake Michigan, the Southeastern Wisconsin Regional Planning Commission was assisted in preparing alternative land use and management plans for the site of a soon to be decommissioned power plant in the City of St. Francis. The Port of Superior received funds to develop a Management Information System to assist in better using existing port land, and the City of Green Bay received funds to prepare a comprehensive waterfront plan. The program also contributed to the revitalization of the Washburn waterfront (Lake Superior). A hotel, restaurant, marina, and boat building and repair facility are now in operation in this city of 2,000 people.

Summary of Evaluation Findings:

In May 1982, an evaluation of the WCMP was conducted covering the period May 1981 through May 1982. Outstanding accomplishments of the program included the successful sponsorship of an internationally important conference on inter-basin water transfer; protection of natural resources through the completion of management plans for Donges Bay Beach, Fish Creek Slough, and other areas; cooperative projects with Wisconsin Indian Tribes; dredge spoil disposal projects; and public information and education efforts. Recommendations for strengthening the program focused on improving the evaluation and reporting functions of the Bureau of Coastal Management; encouraging more public participation in the WCMP; and improving enforcement and simplifying permitting procedures.

The WCMP was evaluated again in April 1984. Final findings will be available in September 1984.

APPENDIX A

COASTAL ZONE MANAGEMENT ACT OF 1972 AS AMENDED

AND

SECTION SUMMARY

COASTAL ZONE MANAGEMENT ACT OF 1972

(PL 92-583, 16 U.S.C. 1451 *et seq.*, October 27, 1972; Amended by PL 93-612, January 2, 1975; PL 94-370, July 26, 1976; PL 95-219, December 28, 1977; PL 95-372, September 18, 1978; PL 96-464, October 17, 1980)

SHORT TITLE

SEC. 301. This title may be cited as the "Coastal Zone Management Act of 1972".

CONGRESSIONAL FINDINGS

SEC. 302. The Congress finds that —

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone.

(b) The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation.

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost.

[302(f) added by PL 96-464]

(f) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activities in the Great Lakes, territorial sea, and Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters. [Former 302(f)—(i) redesignated as (g)—(j) by PL 96-464]

(g) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values.

(h) In light of competing demands and the urgent need to protect and to give high priority to natural systems in

the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(i) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(j) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

CONGRESSIONAL DECLARATION OF POLICY

SEC. 303. The Congress finds and declares that it is the national policy—

(1) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations;

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, which programs should at least provide for—

(A) the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone.

(B) the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas of subsidence and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands.

(C) priority consideration being given to coastal-dependent uses and orderly processes for siting major

facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists,

(D) public access to the coasts for recreation purposes,

(E) assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features,

(F) the coordination and simplification of procedures in order to ensure expedited governmental decision-making for the management of coastal resources,

(G) continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies,

(H) the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decisionmaking, and

(I) assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies; and

(3) to encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, and improved predictability in governmental decisionmaking; and

(4) to encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this title.

[303 revised by PL 96-464]

DEFINITIONS

SEC. 304. For the purposes of this title —

(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

[304(2) added by PL 96-464]

(2) The term "coastal resource of national significance" means any coastal wetland, beach, dune, barrier island, reef, estuary, or fish and wildlife habitat, if any such area is determined by a coastal state to be of substantial biological or natural storm protective value. [Former 304(2)—(16) redesignated as (3)—(17) by PL 96-464]

(3) The term "coastal waters" means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (B) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(4) The term "coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, and American Samoa.

[304(4) amended by PL 96-464]

(5) The term "coastal energy activity" means any of the following activities if, and to the extent that (A) the conduct, support, or facilitation of such activity requires and involves the siting, construction, expansion, or operation of any equipment or facility; and (B) any technical requirement exists which, in the determination of the Secretary, necessitates that the siting, construction, expansion, or operation of such equipment or facility be carried out in, on in close proximity to, the coastal zone of any coastal state:

(i) Any outer Continental Shelf energy activity.

(ii) Any transportation, conversion, treatment, transfer, or storage of liquefied natural gas.

(iii) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deep-water port, as defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(10))).

For purposes of this paragraph, the siting, construction, expansion, or operation of any equipment or facility shall be in close proximity to the coastal zone of any coastal state if such siting, construction, expansion, or operation has, or is likely to have, a significant effect on such coastal zone.

(6) The term "energy facilities" means any equipment or facility which is or will be used primarily —

(A) in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource; or

(B) for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in subparagraph (A).

The term includes, but is not limited to (i) electric generating plants; (ii) petroleum refineries and associated facilities; (iii) gasification plants; (iv) facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas; (v) uranium enrichment

or nuclear fuel processing facilities: (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities including deepwater ports, for the transfer of petroleum; (viii) pipelines and transmission facilities; and (ix) terminals which are associated with any of the foregoing.

(7) The term "estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(8) The term "estuarine sanctuary" means a research area which may include any part or all of an estuary and any island, transitional area, and upland in, adjoining, or adjacent to such estuary, and which constitute to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(9) The term "Fund" means the Coastal Energy Impact Fund established by section 308(h).

(10) The term "land use" means activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 307(g).

(11) The term "local government" means any political subdivision of, or any special entity created by, any coastal state which (in whole or part) is located in, or has authority over, such state's coastal zone and which (A) has authority to levy taxes, or to establish and collect user fees, or (B) provides any public facility or public service which is financed in whole or part by taxes or user fees. The term includes, but is not limited to, any school district, fire district, transportation authority, and any other special purpose district or authority.

(12) The term "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(13) The term "outer continental shelf energy activity" means any exploration for, or any development or production of, oil or natural gas from the outer continental shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), or the siting, construction, expansion, or operation of any new or expanded energy facilities directly required by such exploration, development, or production.

(14) The term "person" means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any state; the Federal Government; any state, regional, or local government; or any entity of any such Federal, state, regional, or local government.

(15) The term "public facilities and public services" means facilities or services which are financed, in whole or in part, by any state or political subdivision thereof, including, but not limited to, highways and secondary roads, parking, mass transit, docks, navigation aids, fire and police protection, water supply, waste collection and

treatment (including drainage), schools and education, and hospitals and health care. Such term may also include any other facility or service so financed which the Secretary finds will support increased population.

(16) The term "Secretary" means the Secretary of Commerce.

(17) The term "special area management plan" means a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone.

[304(17) added by PL 96-464]

(18) The term "water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 307(f).

MANAGEMENT PROGRAM DEVELOPMENT GRANTS

SEC. 305. (a) The Secretary may make grants to any coastal state —

(1) under subsection (c) for the purpose of assisting such state in the development of a management program for the land and water resources of its coastal zone; and

(2) under subsection (d) for the purpose of assisting such state in the completion of the development, and the initial implementation, of its management program before such state qualifies for administrative grants under section 306.

(b) The management program for each coastal state shall include each of the following requirements:

(1) An identification of the boundaries of the coastal zone subject to the management program.

(2) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(3) An inventory and designation of areas of particular concern within the coastal zone.

(4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.

(5) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(6) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

(7) A definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

(9) A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

No management program is required to meet the requirements in paragraphs (7), (8), and (9) before October 1, 1978.

(c) The Secretary may make a grant annually to any coastal state for the purposes described in subsection (a)(1) if such state reasonably demonstrates to the satisfaction of the Secretary that such grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed 80 per centum of such state's costs for such purposes in any one year. No coastal state is eligible to receive more than four grants pursuant to this subsection. After the initial grant is made to any coastal state pursuant to this subsection, no subsequent grant shall be made to such state pursuant to this subsection unless the Secretary finds that such state is satisfactorily developing its management program.

(d)(1) The Secretary may make a grant annually to any coastal state for the purposes described in subsection (a)(2) if the Secretary finds that such state meets the eligibility requirements set forth in paragraph (2). The amount of any such grant shall not exceed 80 per centum of the costs for such purposes in any one year.

(2) A coastal state is eligible to receive grants under this subsection if it has —

(A) developed a management program which —

(i) is in compliance with the rules and regulations promulgated to carry out subsection (b), but

(ii) has not yet been approved by the Secretary under section 306;

(B) specifically identified, after consultation with the Secretary, any deficiency in such program which makes it ineligible for approval by the Secretary pursuant to section 306, and has established a reasonable time schedule during which it can remedy any such deficiency;

(C) specified the purposes for which any such grant will be used;

(D) taken or is taking adequate steps to meet any requirement under section 306 or 307 which involves any Federal official or agency; and

(E) complied with any other requirement which the Secretary, by rules and regulations, prescribes as being necessary and appropriate to carry out the purposes of this subsection.

(3) No management program for which grants are made under this subsection shall be considered an approved program for purposes of section 307.

(e) Grants under this section shall be made to, and allocated among, the coastal states pursuant to rules and regulations promulgated by the Secretary; except that —

(1) no grant shall be made under this section in an amount which is more than 10 per centum of the total amount appropriated to carry out the purposes of this

section, but the Secretary may waive this limitation in the case of any coastal state which is eligible for grants under subsection (d); and

(2) no grant shall be made under this section in an amount which is less than 1 per centum of the total amount appropriated to carry out the purposes of this section, but the Secretary shall waive this limitation in the case of any coastal state which requests such a waiver.

(f) The amount of any grant (or portion thereof) made under this section which is not obligated by the coastal state concerned during the fiscal year for which it was first authorized to be obligated by such state, or during the fiscal year immediately following, shall revert to the Secretary who shall add such amount to the funds available for grants under this section.

(g) With the approval of the Secretary, any coastal state may allocate to any local government, to any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to any regional agency, or to any interstate agency, a portion of any grant received by it under this section for the purpose of carrying out the provisions of this section.

(h) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306. Whenever the Secretary approves the management program of any coastal state under section 306, such state thereafter —

(1) shall not be eligible for grants under this section; except that such state may receive grants under subsection (c) in order to comply with the requirements of paragraphs (7), (8), and (9) of subsection (b); and

(2) shall be eligible for grants under section 306.

(i) The authority to make grants under this section shall expire on September 3, 1979.

ADMINISTRATIVE GRANTS

SEC. 306. (a) The Secretary may make grants to any coastal state for not more than 80 per centum of the costs of administering such state's management program if the Secretary—

(1) finds that such program meets the requirements of section 305(b);

(2) approves such program in accordance with subsections (c), (d) and (e); and

(3) finds, if such program has been administered with financial assistance under this section for at least one year, that the coastal state will expend an increasing proportion of each grant received under this section (but not more than 30 per centum of the grant unless the state chooses to expend a higher percentage) on activities that will result in significant improvement being made in achieving the coastal management objectives specified in section 303(2)(A) through (I).

For purposes of this subsection, the costs of administering a management program includes costs incurred in the carrying out, in a manner consistent with the procedures and processes specified therein, of projects and other activities (other than those of a kind

referred to in clauses (A), (B), or (C) of section 306A(c)(2) that are necessary or appropriate to the implementation of the management program.

[306(a) revised by PL 96-464]

(b) Such grants shall be allocated to the states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided*, That no annual grant made under this section shall be less than 1 per centum of the total amount appropriated to carry out the purposes of this section: *And provided further*, That the Secretary shall waive the application of the 1 per centum minimum requirement as to any grant under this section, when the coastal State involved requests such a waiver.

[306(b) amended by PL 93-612; PL 96-464]

(c) Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

(2) The state has:

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title: except that the Secretary shall not find any mechanism to be 'effective' for purposes of this subparagraph unless it includes each of the following requirements:

(i) Such management agency is required, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, to send a notice of such management program decision to any local government whose zoning authority is affected thereby.

(ii) Any such notice shall provide that such local government may, within the 30-day period commencing on the date of receipt of such notice, submit to the management agency written comments on such management program decision, and any recommendation for alternatives thereto, if no action is taken during such

period which would conflict or interfere with such management program decision, unless such local government waives its right to comment.

(iii) Such management agency, if any such comments are submitted to it, with such 30-day period, by any local government —

(I) is required to consider any such comments.

(II) is authorized, in its discretion, to hold a public hearing on such comments, and

(III) may not take any action within such 30-day period to implement the management program decision, whether or not modified on the basis of such comments.

(3) The state has held public hearings in the development of the management program.

(4) The management program and any changes thereto have been reviewed and approved by the Governor.

(5) The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

(6) The state is organized to implement the management program required under paragraph (1) of this subsection.

(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

(8) The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such consideration to any applicable interstate energy plan or program.

(9) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values.

(d) Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power —

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(e) Prior to granting approval, the Secretary shall also find that the program provides:

(1) for any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulation; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(f) With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section. *Provided*, That such allocation shall not relieve the state of the responsibility for ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

(g) Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described in subsection (c). Except with respect to any such amendment which is made before October 1, 1978, for the purpose of complying with the requirements of paragraphs (7), (8), and (9) of section 305(b), no grant shall be made under this section to any coastal state after the date of such an amendment or modification, until the Secretary approves such amendment or modification.

(h) At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs. *Provided*, That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

(i) The coastal states are encouraged to provide in their management programs for—

(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and

(B) specific and enforceable standards to protect such resources.

If the Secretary determines that a coastal state has failed to make satisfactory progress in the activities described in this subsection by September 30, 1984, the Secretary shall not make any grants to such state provided under section 306A after such date.

[306(i) added by PL 96-464]

[Editor's note: Section 5(b) of PL 96-464 provides:

"(b) The amendments made by subsection (a)(1) and (2)* of this section apply with respect to grants made after September 30, 1980, under section 306 of the Coastal Zone Management Act of 1972 and, within two hundred and seventy days after such date, the Secretary of Commerce shall issue regulations relating to the administration of subsection (a) of such section 306 (as so amended by such subsection (a)(1))."]

RESOURCE MANAGEMENT IMPROVEMENT GRANTS

[306A added by PL 96-464]

SEC. 306A. (a) For purposes of this section—

(1) The term 'eligible coastal state' means a coastal state that for any fiscal year for which a grant is applied for under this section—

((A) has a management program approved under section 306; and

(B) in the judgment of the Secretary, is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 303(2)(A) through (I).

(2) The term 'urban waterfront and port' means any developed area that is densely populated and is being used for, or has been used for, urban residential recreational, commercial, shipping or industrial purposes.

(b) The Secretary may make grants to any eligible coastal state to assist that state in meeting one or more of the following objectives:

(1) The preservation or restoration of specific areas of the state that (A) are designated under the management program procedures required by section 306 (c)(9) because of their conservation recreational, ecological, or esthetic values, or (B) contain one or more coastal resources of national significance.

(2) The redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under section 305(b)(3) in the state's management program as areas of particular concern.

(3) The provision of access of public beaches and other public coastal areas and to coastal waters in accordance with the planning process required under section 305(b)(7).

(c) (1) Each grant made by the Secretary under this section shall be subject to such terms and conditions as may be appropriate to ensure that the grant is used for purposes consistent with this section.

(2) Grants made under this section may be used for—

(A) the acquisition of fee simple and other interests in land;

(B) low-cost construction projects determined by the Secretary to be consistent with the purposes of this section, including but not limited to, paths, walkways, fences, parks, and the rehabilitation of historic buildings and structures; except that not more than 50 per centum

*Subsections (a)(1) and (2) amended Section 306(a) and (b), respectively, of this Act.

of any grant made under this section may be used for such construction projects;

(C) in the case of grants made for objectives described in subsection (b)(2)—

(i) the rehabilitation or acquisition of piers to provide increased public use, including compatible commercial activity,

(ii) the establishment of shoreline stabilization measures including the installation or rehabilitation of bulkheads for the purpose of public safety or increasing public access and use, and

(iii) the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas, but activities provided for under this paragraph shall not be treated as construction projects subject to the limitations in paragraph (B);

(D) engineering designs, specifications, and other appropriate reports; and

(E) educational, interpretive, and management costs and such other related costs as the Secretary determines to be consistent with the purposes of this section.

(d)(1) No grant made under this section may exceed an amount equal to 80 per centum of the cost of carrying out the purpose or project for which it was awarded.

(2) Grants provided under this section may be used to pay a coastal state's share of costs required under any other Federal program that is consistent with the purposes of this section.

(3) The total amount of grants made under this section to any eligible coastal state for any fiscal year may not exceed an amount equal to 10 per centum of the total amount appropriated to carry out this section for such fiscal year.

(e) With the approval of the Secretary, an eligible coastal state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of any grant made under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state's approved management program.

(f) In addition to providing grants under this section, the Secretary shall assist eligible coastal states and their local governments in identifying and obtaining other sources of available Federal technical and financial assistance regarding the objectives of this section.

COORDINATION AND COOPERATION

SEC. 307. (a) In carrying out his functions and responsibilities under this title, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(c)(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 306, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until —

(i) such state or its designated agency, in accordance with the procedures required to be established by such

state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or

[(ii) revised by PL 95-372, September 18, 1978]

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

(d) State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security.

(e) Nothing in this title shall be construed —

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 306 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program with respect to that portion of the coastal zone management program affecting such inland areas.

(h) In case of serious disagreement between any Federal agency and a coastal state —

(1) in the development or the initial implementation of a management program under section 305; or

(2) in the administration of a management program approved under section 306;

the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

COASTAL ENERGY IMPACT PROGRAM

SEC. 308. (a) (1) The Secretary shall administer and coordinate, as part of the coastal zone management activities of the Federal Government provided for under this title, a coastal energy impact program. Such program shall consist of the provision of financial assistance to meet the needs of coastal states and local governments in such states resulting from specified activities involving energy development. Such assistance, which includes —

(A) grants, under subsection (b), to coastal states for the purposes set forth in subsection (b)(5) with respect to consequences resulting from the energy activities specified therein;

(B) grants, under subsection (c)(1), to coastal states for study of, and planning for, consequences relating to new

or expanded energy facilities in, or which significantly affect, the coastal zone:

(C) grants, under subsection (c)(2), to coastal states to carry out their responsibilities under the Outer Continental Shelf Lands Act;

(D) loans, under subsection (d)(1), to coastal states and units of general purpose local government to assist such states and units to provide new or improved public facilities or public services which are required as a result of coastal energy activity;

(E) guarantees, under subsection (d)(2) and subject to the provisions of subsection (f), of bonds or other evidences of indebtedness issued by coastal states and units of general purpose local government for the purpose of providing new or improved public facilities or public services which are required as a result of coastal energy activity;

(F) grants or other assistance, under subsection (d)(3), to coastal states and units of general purpose local government to enable such states and units to meet obligations under loans or guarantees under subsection (d) (1) or (2) which they are unable to meet as they mature, for reasons specified in subsection (d)(3); and

(G) grants, under subsection (d)(4), to coastal states which have suffered, are suffering, or will suffer any unavoidable loss of a valuable environmental or recreational resource;

shall be provided, administered, and coordinated by the Secretary in accordance with the provisions of this section and under the rules and regulations required to be promulgated pursuant to paragraph (2). Any such financial assistance shall be subject to audit under section 313.

(2) The Secretary shall promulgate, in accordance with section 317, such rules and regulations (including, but not limited to, those required under subsection (e) as may be necessary and appropriate to carry out the provisions of this section.

(b) (1) The Secretary shall make grants annually to coastal states, in accordance with the provisions of this subsection.

(2) Subject to paragraph (3), the amounts payable to coastal states under this subsection shall be, with respect to any such state for any fiscal year, the sum of the amounts calculated, with respect to such state, pursuant to subparagraphs (A), (B), and (C):

(A) An amount which bears, to one-half of the amount appropriated for the purpose of funding grants under this subsection for such fiscal year, the same ratio that the amount of outer Continental Shelf acreage which is adjacent to such state and which is newly leased by the Federal Government in the immediately preceding fiscal year bears to the total amount of outer Continental Shelf acreage which is newly leased by the Federal Government in such preceding year.

(B) An amount which bears, to one-quarter of the amount appropriated for such purpose for such fiscal year, the same ratio that the volume of oil and natural gas produced in the immediately preceding fiscal year from the outer Continental Shelf acreage which is adjacent to such state and which is leased by the Federal

Government bears to the total volume of oil and natural gas produced in such year from all of the outer Continental Shelf acreage which is leased by the Federal Government.

(C) An amount which bears, to one-quarter of the amount appropriated for such purpose for such fiscal year, the same ratio that the volume of oil and natural gas produced from outer Continental Shelf acreage leased by the Federal Government which is first landed in such state in the immediately preceding fiscal year bears to the total volume of oil and natural gas produced from all outer Continental Shelf acreage leased by the Federal Government which is first landed in all of the coastal states in such year.

(3)(A)(i) After making the calculations required under paragraph (2) for any fiscal year, the Secretary shall —

(I) with respect to any coastal state which, based on such calculations, would receive an amount which is less than 2 per centum of the amount appropriated for such fiscal year, increase the amount appropriated for such fiscal year, increase the amount payable to such coastal state to 2 per centum of such appropriated amount; and

(II) with respect to any coastal state which, in such fiscal year, would not receive a grant under paragraph (2), make a grant to such coastal state in an amount equal to 2 per centum of the total amount appropriated for making grants to all states under paragraph (2) in such fiscal year if any other coastal state in the same region will receive a grant under such paragraph in such fiscal year, except that a coastal state shall not receive a grant under this subclause unless the Secretary determines that it is being or will be impacted by outer Continental Shelf energy activity and that it will be able to expend or commit the proceeds of such grant in accordance with the purposes set forth in paragraph (5).

(ii) For purposes of this subparagraph —

(I) the states of Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia, the Commonwealth of Puerto Rico, and the Virgin Islands (the Atlantic coastal states) shall constitute one 'region';

(II) the states of Alabama, Florida, Louisiana, Mississippi, and Texas (the Gulf coastal states) shall constitute one 'region'.

(III) the states of California, Hawaii, Oregon, and Washington (the Pacific coastal states) shall constitute one 'region' and

(IV) the state of Alaska shall constitute one 'region'.

(B) If, after the calculations required under subparagraph (A), the total amount of funds appropriated for making grants to coastal states in any fiscal year pursuant to this subsection is less than the total amount of grants payable to all coastal states in such fiscal year, there shall be deducted from the amount payable to each coastal state which will receive more than 2 per centum of the amount of funds so appropriated an amount equal to the product of —

(i) the amount by which the total amount of grants payable to all coastal states in such fiscal year exceeds

the total amount of funds appropriated for making such grants; multiplied by

(ii) a fraction, the numerator of which is the amount of grants payable to such coastal state in such fiscal year reduced by an amount equal to 2 per centum of the total amount appropriated for such fiscal year and the denominator of which is the total amount of grants payable to coastal states which, in such fiscal year, will receive more than 2 per centum of the amount of funds so appropriated, reduced by an amount equal to the product of 2 per centum of the total amount appropriated for such fiscal year multiplied by the number of such coastal states.

(C)(i) If, after the calculations required under subparagraph (B) for any fiscal year, any coastal state would receive an amount which is greater than 37½ per centum of the amount appropriated for such fiscal year, the Secretary shall reduce the amount payable to such coastal state to 37½ per centum of such appropriated amount.

(ii) Any amount not payable to a coastal state in a fiscal year due to a reduction under clause (i) shall be payable proportionately to all coastal states which are to receive more than 2 per centum and less than 37½ per centum of the amount appropriated for such fiscal year, except that in no event shall any coastal state receive more than 37½ per centum of such appropriated amount.

(iii) For purposes of this subparagraph, the term 'payable proportionately' means payment in any fiscal year in accordance with the provisions of paragraph (2), except that in making calculations under such paragraph the Secretary shall only include those coastal states which are to receive more than 2 per centum and less than 37½ per centum of the amount appropriated for such fiscal year.

(4)(A) The Secretary shall determine annually the amounts of the grants to be provided under this subsection and shall collect and evaluate such information as may be necessary to make such determinations. Each Federal department, agency, and instrumentality shall provide to the Secretary such assistance in collecting and evaluating relevant information as the Secretary may request. The Secretary shall request the assistance of any appropriate state agency in collecting and evaluating such information.

(B) For purposes of making calculations under paragraph (2), outer Continental Shelf acreage is adjacent to a particular coastal state if such acreage lies on that state's side of the extended lateral seaward boundaries of such state. The extended lateral seaward boundaries of a coastal state shall be determined as follows:

(i) If lateral seaward boundaries have been clearly defined or fixed by an interstate compact, agreement, or judicial decision (if entered into, agreed to, or issued before the date of the enactment of this paragraph), such boundaries shall be extended on the basis of the principles of delimitation used to so define or fix them in such compact, agreement, or decision.

(ii) If no lateral seaward boundaries, or any portion thereof, have been clearly defined or fixed by an interstate compact, agreement, or judicial decision, lateral

seaward boundaries shall be determined according to the applicable principles of law, including the principles of the Convention on the Territorial Sea and the Contiguous Zone, and extended on the basis of such principles.

(iii) If, after the date of enactment of this paragraph, two or more coastal states enter into, or amend an interstate compact or agreement in order to clearly define or fix lateral seaward boundaries, such boundaries shall thereafter be extended on the basis of the principles of delimitation used to so define or fix them in such compact or agreement.

(C) For purposes of making calculations under this subsection, the transitional quarter beginning July 1, 1976, and ending September 30, 1976, shall be included within the fiscal year ending June 30, 1976.

(5) Each coastal state shall use the proceeds of grants received by it under this subsection for the following purposes (except that priority shall be given to the use of such proceeds for the purpose set forth in subparagraph (A)):

(A) The retirement of state and local bonds, if any, which are guaranteed under subsection (d) (2); except that, if the amount of such grants is insufficient to retire both state and local bonds, priority shall be given to retiring local bonds.

(B) The study of, planning for, development of, and the carrying out of projects and programs in such state which are —

(i) necessary to provide new or improved public facilities and public services which are required as a result of outer Continental Shelf energy activity;

(ii) of a type approved by the Secretary as eligible for grants under this paragraph, except that the Secretary may not disapprove any project or program for highways and secondary roads, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care.

The Secretary may, pursuant to criteria promulgated by rule, describe geographic areas in which public facilities and public services referred to in clause (i) shall be presumed to be required as a result of outer Continental Shelf energy activity for purposes of disbursing the proceeds of grants under this subsection.

(C) The prevention, reduction, or amelioration of any unavoidable loss in such state's coastal zone of any valuable environmental or recreational resource if such loss results from coastal energy activity.

(6) The Secretary, in a timely manner, shall determine that each coastal state has expended or committed, and may determine that such state will expend or commit, grants which such state has received under this subsection in accordance with the purposes set forth in paragraph (5). The United States shall be entitled to recover from any coastal state an amount equal to any portion of any such grant received by such state under this subsection which —

(A) is not expended or committed by such state before the close of the fiscal year immediately following the fiscal year in which the grant was disbursed, or

(B) is expended or committed by such state for any purpose other than a purpose set forth in paragraph (5). Before disbursing the proceeds of any grant under this subsection to any coastal state, the Secretary shall require such state to provide adequate assurances of being able to return to the United States any amounts to which the preceding sentence may apply.

(c)(1) The Secretary shall make grants to any coastal state if the Secretary finds that the coastal zone of such state is being, or is likely to be significantly affected by the siting, construction, expansion, or operation of new or expanded energy facilities. Such grants shall be used for the study of, and planning for (including, but not limited to, the application of the planning process included in a management program pursuant to section 305(b)(8)) any economic, social, or environmental consequence which has occurred, is occurring, or is likely to occur in such state's coastal zone as a result of the siting, construction, expansion, or operation of such new or expanded energy facilities. The amount of any such grant shall not exceed 80 per centum of the cost of such study and planning.

(2) The Secretary shall make grants under this paragraph to any coastal state which the Secretary finds is likely to be affected by outer Continental Shelf energy activities. Such grants shall be used by such state to carry out its responsibilities under the Outer Continental Shelf Lands Act. The amount of any such grant shall not exceed 80 per centum of the cost of carrying out such responsibilities.

(3) (A) The Secretary shall make grants to any coastal state to enable such state to prevent, reduce, or ameliorate any unavoidable loss in such state's coastal zone of any valuable environmental or recreational resource, if such loss results from the transportation, transfer, or storage of coal or from alternative ocean energy activities.

(B) Such grants shall be allocated to any such state based on rules and regulations promulgated by the Secretary which shall take into account the number of coal or alternative ocean energy facilities, the nature of their impacts, and such other relevant factors deemed appropriate by the Secretary.

[308(c)(3) added by PL 96-464]

(d)(1) The Secretary shall make loans to any coastal state and to any unit of general purpose local government to assist such state or unit to provide new or improved public facilities or public services, or both, which are required as a result of coastal energy activity. Such loans shall be made solely pursuant to this title, and no such loan shall require as a condition thereof that any such state or unit pledge its full faith and credit to the repayment thereof. No loan shall be made under this paragraph after September 30, 1986.

(2) The Secretary shall, subject to the provisions of subsection (f), guarantee, or enter into commitments to guarantee, the payment of interest on, and the principal amount of, any bond or other evidence of indebtedness if it is issued by a coastal state or a unit of general purpose local government for the purpose of providing new or improved public facilities or public services, or both, which are required as a result of a coastal energy activity.

(3) If the Secretary finds that any coastal state or unit of general purpose local government is unable to meet its obligations pursuant to a loan or guarantee made under paragraph (1) or (2) because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such state or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the information submitted by such state or unit pursuant to subsection (e)(3), take any of the following actions:

(A) Modify appropriately the terms and conditions of such loan or guarantee.

(B) Refinance such loan.

(C) Make a supplemental loan to such state or unit the proceeds of which shall be applied to the payment of principal and interest due under such loan or guarantee.

(D) Make a grant to such state or unit the proceeds of which shall be applied to the payment of principal and interest due under such loan or guarantee.

Notwithstanding the preceding sentence, if the Secretary

(i) has taken action under subparagraph (A), (B), or (C) with respect to any loan or guarantee made under paragraph (1) or (2), and

(ii) finds that additional action under subparagraph (A), (B), or (C) will not enable such state or unit to meet, within a reasonable time, its obligations under such loan or guarantee and any additional obligations related to such loan or guarantee; the Secretary shall make a grant or grants under subparagraph (D) to such state or unit in an amount sufficient to enable such state or unit to meet such outstanding obligations.

(4) [308(d)(4) deleted by PL 96-464]

(e) Rules and regulations with respect to the following matters shall be promulgated by the Secretary as soon as practicable, but not later than 270 days after the date of the enactment of this section:

(1) A formula and procedures for apportioning equitably, among the coastal states, the amounts which are available for the provision of financial assistance under subsection (d). Such formula shall be based on, and limited to, the following factors:

(A) The number of additional individuals who are expected to become employed in new or expanded coastal energy activity, and the related new population, who reside in the respective coastal states.

(B) The standardized unit costs (as determined by the Secretary by rule), in the relevant regions of such states, for new or improved public facilities and public services which are required as a result of such expected employment and the related new population.

(2) Criteria under which the Secretary shall review each coastal state's compliance with the requirements of subsection (g)(2).

(3) Criteria and procedures for evaluating the extent to which any loan or guarantee under subsection (d)(1) or (2) which is applied for by any coastal state or unit of general purpose local government can be repaid through its ordinary methods and rates for generating tax revenues. Such procedures shall require such state or unit

to submit to the Secretary such information which is specified by the Secretary to be necessary for such evaluation, including, but not limited to —

(A) a statement as to the number of additional individuals who are expected to become employed in the new or expanded coastal energy activity involved, and the related new population, who reside in such state or unit;

(B) a description, and the estimated costs of the new or improved public facilities or public services needed or likely to be needed as a result of such expected employment and related new population;

(C) a projection of such state's or unit's estimated tax receipts during such reasonable time thereafter, not to exceed 30 years, which will be available for the repayment of such loan or guarantee; and

(D) a proposed repayment schedule.

The procedures required by this paragraph shall also provide for the periodic verification, review, and modification (if necessary) by the Secretary of the information or other material required to be submitted pursuant to this paragraph.

(4) Requirements, terms, and conditions (which may include the posting of security) which shall be imposed by the Secretary, in connection with loans and guarantees made under subsections (d)(1) and (2), in order to assure repayment within the time fixed, to assure that the proceeds thereof may not be used to provide public services for an unreasonable length of time, and otherwise to protect the financial interests of the United States.

(5) Criteria under which the Secretary shall establish rates of interest on loans made under subsections (d)(1) and (3). Such rates shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturity of such loans.

In developing rules and regulations under this subsection, the Secretary shall, to the extent practicable, request the views of, or consult with, appropriate persons regarding impacts resulting from coastal energy activity.

(f)(1) Bonds or other evidences of indebtedness guaranteed under subsection (d)(2) shall be guaranteed on such terms and conditions as the Secretary shall prescribe, except that —

(A) no guarantee shall be made unless the indebtedness involved will be completely amortized within a reasonable period, not to exceed 30 years;

(B) no guarantee shall be made unless the Secretary determines that such bonds or other evidences of indebtedness will —

(i) be issued only to investors who meet the requirements prescribed by the Secretary, or, if an offering to the public is contemplated, be underwritten upon terms and conditions approved by the Secretary;

(ii) bear interest at a rate found not to be excessive by the Secretary; and

(iii) contain, or be subject to, repayment, maturity, and other provisions which are satisfactory to the Secretary;

(C) the approval of the Secretary of the Treasury shall be required with respect to any such guarantee, unless the Secretary of the Treasury waives such approval; and

(D) no guarantee shall be made after September 30, 1986.

(2) The full faith and credit of the United States is pledged to the payment, under paragraph (5), of any default on any indebtedness guaranteed under subsection (d)(2). Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation involved for such guarantee, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligation, except for fraud or material misrepresentation on the part of the holder, or known to the holder at the time acquired.

(3) The Secretary shall prescribe and collect fees in connection with guarantees made under subsection (d)(2). These fees may not exceed the amount which the Secretary estimates to be necessary to cover the administrative costs pertaining to such guarantees.

(4) The interest paid on any obligation which is guaranteed under subsection (d)(2) and which is received by the purchaser thereof (or the purchaser's successor in interest), shall be included in gross income for the purpose of chapter 1 of the Internal Revenue Code of 1954. The Secretary may pay out of the Fund to the coastal state or the unit of general purpose local government issuing such obligations not more than such portion of the interest on such obligations as exceeds the amount of interest that would be due at a comparable rate determined for loans made under subsection (d)(1).

(5)(A) Payments required to be made as a result of any guarantee made under subsection (d)(2) shall be made by the Secretary from sums appropriated to the Fund or from moneys obtained from the Secretary of the Treasury pursuant to paragraph (6).

(B) If there is a default by a coastal state or unit of general purpose local government in any payment of principal or interest due under a bond or other evidence of indebtedness guaranteed by the Secretary under subsection (d)(2), any holder of such bond or other evidence of indebtedness may demand payment by the Secretary of the unpaid interest on and the unpaid principal of such obligation as they become due. The Secretary, after investigating the facts presented by the holder, shall pay to the holder the amount which is due such holder, unless the Secretary finds that there was no default by such state or unit or that such default has been remedied.

(C) If the Secretary makes a payment to a holder under subparagraph (B), the Secretary shall —

(i) have all of the rights granted to the Secretary or the United States by law or by agreement with the obligor; and

(ii) be subrogated to all of the rights which were granted such holder, by law, assignment, or security agreement between such holder and the obligor.

Such rights shall include, but not be limited to, a right of reimbursement to the United States against the coastal state or unit of general purpose local government for which the payment was made for the amount of such payment plus interest at the prevailing current rate as determined by the Secretary. If such coastal state, or the coastal state in which such unit is located, is due to receive any amount under subsection (b), the Secretary shall, in lieu of paying such amount to such state, deposit such amount in the Fund until such right of reimbursement has been satisfied. The Secretary may accept, in

complete or partial satisfaction of any such rights, a conveyance of property or interests therein. Any property so obtained by the Secretary may be completed, maintained, operated, held, rented, sold, or otherwise dealt with or disposed of on such terms or conditions as the Secretary prescribes or approves. If, in any case, the sum received through the sale of such property is greater than the amount paid to the holder under subparagraph (D) plus costs, the Secretary shall pay any such excess to the obligor.

(D) The Attorney General shall, upon the request of the Secretary, take such action as may be appropriate to enforce any right accruing to the Secretary or the United States as a result of the making of any guarantee under subsection (d)(2). Any sums received through any sale under subparagraph (C) or recovered pursuant to this subparagraph shall be paid into the Fund.

(6) If the moneys available to the Secretary are not sufficient to pay any amount which the Secretary is obligated to pay under paragraph (5), the Secretary shall issue to the Secretary of the Treasury notes or other obligations (only to such extent and in such amounts as may be provided for in appropriation Acts) in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury prescribes. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such notes or other obligations. Any sums received by the Secretary through such issuance shall be deposited in the Fund. The Secretary of the Treasury shall purchase any notes or other obligations issued under this paragraph, and for this purpose such Secretary may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force. The purposes for which securities may be issued under that Act are extended to include any purchase of notes or other obligations issued under this paragraph. The Secretary of the Treasury may at any time sell any of the notes or other obligations so acquired under this paragraph. All redemptions, purchases, and sales of such notes or other obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States.

(g)(1) No coastal state is eligible to receive any financial assistance under this section unless such state —

(A) has a management program which has been approved under section 306;

(B) is receiving a grant under section 305(c) or (d); or

(C) is, in the judgment of the Secretary, making satisfactory progress toward the development of a management program which is consistent with the policies set forth in section 303.

(2) Each coastal state shall, to the maximum extent practicable, provide that financial assistance provided under this section be apportioned, allocated, and granted to units of local government within such state on a basis which is proportional to the extent to which such units need such assistance.

(h) There is established in the Treasury of the United States the Coastal Energy Impact Fund. The Fund shall be available to the Secretary without fiscal year limitation as a revolving fund for the purposes of carrying out subsections (c)(1) and (d). The Fund shall consist of —

(1) any sums appropriated to the Fund;

(2) payments of principal and interest received under any loan made under subsection (d)(1);

(3) any fees received in connection with any guarantee made under subsection (d)(2); and

(4) any recoveries and receipts under security, subrogation, and other rights and authorities described in subsection (f).

All payments made by the Secretary to carry out the provisions of subsections (c)(1)(d), and (f) (including reimbursements to other Government accounts) shall be paid from the Fund, only to the extent provided for in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of subsections (c)(1), (d), and (f) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(i) The Secretary shall not intercede in any land use or water use decision of any coastal state with respect to the siting of any energy facility or public facility by making siting in a particular location a prerequisite to, or a condition of, financial assistance under this section.

(j) The Secretary may evaluate, and report to the Congress, on the efforts of the coastal states and units of local government therein to reduce or ameliorate adverse consequences resulting from coastal energy activity and on the extent to which such efforts involve adequate consideration of alternative sites.

(k) To the extent that Federal funds are available under, or pursuant to, any other law with respect to —

(1) study and planning for which financial assistance may be provided under subsection (b)(4)(B) and (c)(1), or

(2) public facilities and public services for which financial assistance may be provided under subsection (b)(4)(B) and (d), the Secretary shall, to the extent practicable, administer such subsections —

(A) on the basis that the financial assistance shall be in addition to, and not in lieu of, any Federal funds which any coastal state or unit of general purpose local government may obtain under any other law; and

(B) to avoid duplication.

(1) As used in this section —

(1) The term 'retirement,' when used with respect to bonds, means the redemption in full and the withdrawal from circulation of those which cannot be repaid by the issuing jurisdiction in accordance with the appropriate repayment schedule.

(2) The term 'unavoidable,' when used with respect to a loss of any valuable environmental or recreational resource, means a loss, in whole or in part —

(A) the costs of prevention, reduction, or amelioration of which cannot be directly or indirectly attributed to, or assessed against, any identifiable person; and

(B) cannot be paid for with funds which are available under, or pursuant to, any provision of Federal law other than this section.

(3) The term 'unit of general purpose local government' means any political subdivision of any coastal state

or any special entity created by such a state or subdivision which (in whole or part) is located in, or has authority over, such state's coastal zone, and which (A) has authority to levy taxes or establish and collect user fees, and (B) provides any public facility or public service which is financed in whole or part by taxes or user fees.

[SEC. 308 revised by PL 95-372, September 18, 1978]

INTERSTATE GRANTS

[309 revised by PL 96-464]

SEC. 309. (a) The coastal States are encouraged to give high priority—

(1) to coordinating State coastal zone planning, policies, and programs with respect to contiguous areas of such States;

(2) to studying, planning, and implementing unified coastal zone policies with respect to such areas; and

(3) to establishing an effective mechanism, and adopting a Federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone.

The coastal zone activities described in paragraphs (1), (2), and (3) of this subsection may be conducted pursuant to interstate agreements or compacts. The Secretary may make grants annually, in amounts not to exceed 90 percent of the cost of such activities, if the Secretary finds that the proceeds of such grants will be used for purposes consistent with sections 305 and 306.

(b) The consent of the Congress is hereby given to two or more coastal States to negotiate, and to enter into, agreements or compacts, which do not conflict with any law or treaty of the United States, for—

(1) developing and administering coordinated coastal zone planning, policies, and programs pursuant to sections 305 and 306; and

(2) establishing executive instrumentalities or agencies which such States deem desirable for the effective implementation of such agreements or compacts. Such agreements or compacts shall be binding and obligatory upon any State or party thereto without further approval by the Congress.

(c) Each executive instrumentality or agency which is established by an interstate agreement or compact pursuant to this section is encouraged to give high priority to the coastal zone activities described in subsection (a). The Secretary, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Energy, or their designated representatives, shall participate ex officio on behalf of the Federal Government whenever any such Federal-State consultation is requested by such an instrumentality or agency.

(d) If no applicable interstate agreement or compact exists, the Secretary may coordinate coastal zone activities described in subsection (a) and may make grants to assist any group of two or more coastal States to create and maintain a temporary planning and coordinating entity to carry out such activities. The amount of such grants shall not exceed 90 percent of the cost of creating and maintaining such an entity.

The Federal officials specified in subsection (c), or their designated representatives, shall participate on behalf of the Federal Government, upon the request of any such temporary planning and coordinating entity for a Federal-State consultation.

(e) A coastal State is eligible to receive financial assistance under this section if such State meets the criteria established under section 308(g)(1).

RESEARCH AND TECHNICAL ASSISTANCE FOR COASTAL ZONE MANAGEMENT

SEC. 310. (a) The Secretary may conduct a program of research, study, and training to support the development and implementation of management programs. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including, but not limited to, the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and training which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(b) The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management. The amount of any grant made under this subsection shall not exceed 80 per centum of the cost of such research, studies, and training.

(c)(1) The Secretary shall provide for the coordination of research, studies, and training activities under this section with any other such activities that are conducted by, or subject to the authority of, the Secretary.

(2) The Secretary shall make the results of research conducted pursuant to this section available to any interested person.

PUBLIC HEARINGS

SEC. 311. All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

REVIEW OF PERFORMANCE

[312 revised by PL 96-464]

SEC. 312. (a) The Secretary shall conduct a continuing review of the performance of coastal states with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (I), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title.

(b) For the purpose of making the evaluation of a coastal state's performance, the Secretary shall conduct public meetings and provide opportunity for oral and written comments by the public. Each such evaluation shall be prepared in report form and the Secretary shall make copies thereof available to the public.

(c) The Secretary shall reduce any financial assistance extended to any coastal state under section 306 (but not below 70 per centum of the amount that would otherwise be available to the coastal state under such section for any year), and withdraw any unexpended portion of such reduction, if the Secretary determines that the coastal state is failing to make significant improvement in achieving the coastal management objectives specified in section 303(2)(A) through (I).

(d) The Secretary shall withdraw approval of the management program of any coastal state, and shall withdraw any financial assistance available to that state under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to, is not justified in deviating from (1) the management program approved by the Secretary, or (2) the terms of any grant or cooperative agreement funded under section 306, and refuses to remedy the deviation.

(e) Management program approval and financial assistance may not be withdrawn under subsection (d), unless the Secretary gives the coastal state notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under this subsection (d), the Secretary shall provide the coastal state with written specifications of the actions that should be taken, or not engaged in, by the state in order that such withdrawal may be canceled by the Secretary.

(f) The Secretary shall carry out research on, and offer technical assistance to the coastal states with respect to, those activities, projects, and other relevant matters evaluated under this section that the Secretary considers to offer promise toward improving coastal zone management.

(Editor's note: Section 9(b) of PL 96-464 provides:

"(b) Within two hundred and seventy days after the date of the enactment of this Act, the Secretary of Commerce shall issue such regulations as may be necessary or appropriate to administer section 312 of the Coastal Zone Management Act of 1972 (as amended by subsection (a)* of this section)."

RECORDS AND AUDIT

SEC. 313. (a) Each recipient of a grant under this title or of financial assistance under Sec. 308 shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant and of the proceeds of such assistance, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

*Subsection (a) revised Section 312 of this Act.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall —

(1) after any grant is made under this title or any financial assistance is provided under section 308(d); and

(2) until the expiration of 3 years after —

(A) completion of the project, program, or other undertaking for which such grant was made or used, or

(B) repayment of the loan or guaranteed indebtedness for which such financial assistance was provided.

have access for purposes of audit and examination to any record, book, document, and paper which belongs to or is used or controlled by, any recipient of the grant funds or any person who entered into any transaction relating to such financial assistance and which is pertinent for purposes of determining if the grant funds or the proceeds of such financial assistance are being, or were, used in accordance with the provisions of this title.

ADVISORY COMMITTEE

SEC. 314. (a) The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

(b) Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including travel time, may receive compensation at rates not exceeding \$100 per diem; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently.

ESTUARINE SANCTUARIES AND ISLAND PRESERVATION

SEC. 315. The Secretary may, in accordance with this section and in accordance with such rules and regulations as the Secretary shall promulgate, make grants to any coastal state for the purpose of —

(1) acquiring, developing, or operating estuarine sanctuaries, to serve as natural field laboratories in which to study and gather data on the natural and human processes occurring within the estuaries of the coastal zone; and

(2) acquiring lands to provide for the preservation of islands, or portions thereof.

The amount of any such grant shall not exceed 50 per centum of the cost of the project involved; except that, in the case of acquisition of any estuarine sanctuary, the Federal share of the cost thereof shall not exceed \$3,000,000. No grant for acquisition of land may be

made under this section without the approval of the Governor of the State in which is located the land proposed to be acquired.

[315 amended by PL 96-464]

COASTAL ZONE MANAGEMENT REPORT

[316 head revised by PL 96-464]

SEC. 316. (a) The Secretary shall consult with the Congress on a regular basis concerning the administration of this title and shall prepare and submit to the President for transmittal to the Congress a report summarizing the administration of this title during each period of two consecutive fiscal years. Each report, which shall be transmitted to the Congress not later than April 1 of the year following the close of the biennial period to which it pertains, shall include, but not be restricted to (1) an identification of the state programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this title and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved and a statement of the reasons for such action; (5) a summary of evaluation findings prepared in accordance with subsection (a) of section 312, and a description of any sanctions imposed under subsections (c) and (d) of this section; (6) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 307, are not consistent with an applicable approved state management program; (7) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (8) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (9) a summary of outstanding problems arising in the administration of this title in order of priority; (10) a description of the economic, environmental, and social consequences of energy activity affecting the coastal zone and an evaluation of the effectiveness of financial assistance under section 308 in dealing with such consequences; (11) a description and evaluation of applicable interstate and regional planning and coordination mechanisms developed by the coastal states; (12) a summary and evaluation of the research, studies, and training conducted in support of coastal zone management; and (13) such other information as may be appropriate.

[316(a) amended by PL 96-464]

(b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this title and enhance its effective operation.

(c) (1) The Secretary shall conduct a systematic review of Federal programs, other than this title, that affect coastal resources for purposes of identifying

conflicts between the objectives and administration of such programs and the purposes and policies of this title. Not later than 1 year after the date of the enactment of this subsection, the Secretary shall notify each Federal agency having appropriate jurisdiction of any conflict between its program and the purposes and policies of this title identified as a result of such review.

(2) The Secretary shall promptly submit a report to the Congress consisting of the information required under paragraph (1) of this subsection. Such report shall include recommendations for changes necessary to resolve existing conflicts among Federal laws and programs that affect the uses of coastal resources.

[316(c) added by PL 96-464]

RULES AND REGULATIONS

SEC 317. The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 318. (a) There are authorized to be appropriated to the Secretary —

(1) such sums, not to exceed \$48,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1985, as may be necessary for grants under section 306, to remain available until expended;

(2) such sums, not to exceed \$20,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1985, as may be necessary for grants under section 306A, to remain available until expended;

(3) such sums, not to exceed \$75,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1988, as may be necessary for grants under section 308(b);

(4) such sums, not to exceed \$3,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1985, as may be necessary for grants under section 309, to remain available until expended;

(5) such sums, not to exceed \$9,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1985, as may be necessary for grants under section 315 to remain available until expended;

(6) such sums, not to exceed \$6,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1985, as may be necessary for administrative expenses incident to the administration of this title.

[318(a) revised by PL 96-464]

(b) There are authorized to be appropriated until October 1, 1986, to the Fund, such sums, not to exceed \$800,000,000, for the purposes of carrying out the provisions of section 308, other than subsection (b), of

which not to exceed \$150,000,000 shall be for purposes of subsections (c)(1), (c)(2) and (c)(3) of such section.

[318(b) amended by PL 96-464]

(c) Federal funds received from other sources shall not be used to pay a coastal state's share of costs under section 306 or 309.

[318(c) amended by PL 96-464]

[Editor's note: In addition to amending existing sections of the Coastal Zone Management Act of 1972 and adding new sections to the Act, PL 94-370 includes the following sections:]

SEC. 15. ADMINISTRATION

(a) [Repealed by PL 95-219]

(b) [Superseded by subsection (b) of PL 95-219. See editor's note below.]

(c) The Secretary may, to carry out the provisions of the amendments made by this Act, establish, and fix the compensation for, four new positions without regard to the provision of chapter 51 of title 5, United States Code, at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. Any such appointment may, at the discretion of the Secretary, be made without regard to the provisions of such title 5 governing appointments in the competitive service.

SEC. 16. SHELLFISH SANITATION REGULATIONS.

(a) The Secretary of Commerce shall —

(1) undertake a comprehensive review of all aspects of the molluscan shellfish industry, including, but not limited to, the harvesting, processing, and transportation of such shellfish; and

(2) evaluate the impact of Federal law concerning water quality on the molluscan shellfish industry.

The Secretary of Commerce shall, not later than April 30, 1977, submit a report to the Congress of the findings, comments, and recommendations (if any) which result from such review and evaluation.

(b) The Secretary of Health, Education, and Welfare shall not promulgate final regulations concerning the national shellfish safety program before June 30, 1977. At least 60 days prior to the promulgation of any such regulations, the Secretary of Health, Education, and Welfare, in consultation with the Secretary of Commerce, shall publish an analysis (1) of the economic impact of such regulations on the domestic shellfish industry, and (2) the cost of such national shellfish safety program relative to the benefits that it is expected to achieve.

[Editor's note: In addition to repealing Section 15(a) of PL 94-370, subsection (b) of PL 95-219 amended Section 5316 of Title 5, United States Code as follows:

"(140) Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(141) Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

(142) Assistant Administrators (3), National Oceanic and Atmospheric Administration.

(143) General Counsel, National Oceanic and Atmospheric Administration."]

[Editor's note: Sections 2 through 11 and 13 of PL 96-464 amended and have been incorporated into the existing language of this Act. Section 12 of PL 96-464 follows:]

SEC. 12. CONGRESSIONAL DISAPPROVAL PROCEDURE.

(a) (1) The Secretary, after promulgating a final rule, shall submit such final rule to the Congress for review in accordance with this section. Such final rule shall be delivered to each House of the Congress on the same date and to each House of the Congress while it is in session. Such final rule shall be referred to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Merchant Marine and Fisheries of the House, respectively.

(2) Any such final rule shall become effective in accordance with its terms unless, before the end of the period of sixty calendar days of continuous session, after the date such final rule is submitted to the Congress, both Houses of the Congress adopt a concurrent resolution disapproving such final rule.

(b) (1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise in the rulemaking power of the House of Representatives and as such they are deemed a part of the Rules of the House of Representatives but applicable only with respect to the procedure to be followed in the House of Representatives in the case of concurrent resolutions which are subject to this section, and such provisions supersede other rules only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time in the same manner and to the same extent as in the case of any other rule of that House.

(2) Any concurrent resolution disapproving a final rule of the Secretary shall, upon introduction or receipt from the other House of the Congress, be referred immediately by the presiding officer of such House to the Committee on Commerce, Science, and Transportation of the Senate or to the Committee on Merchant Marine and Fisheries of the House, as the case may be.

(3) (A) When a committee has reported a concurrent resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion shall be highly privileged in the House of Representatives, and shall not be debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate in the House of Representatives on the concurrent resolution shall be limited to not more than ten hours which shall be divided equally between those favoring and those opposing such concurrent resolution and a motion further to limit debate shall not be debatable. In the House of Representatives, an amendment to, or motion to recommit, the concurrent

resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such concurrent resolution was agreed to or disagreed to.

(4) Appeals from the decision of the Chair relating to the application of the rules of the House of Representatives to the procedure relating to a concurrent resolution shall be decided without debate.

(5) Notwithstanding any other provision of this subsection, if a House has approved a concurrent resolution with respect to any final rule of the Secretary, then it shall not be in order to consider in such House any other concurrent resolution with respect to the same final rule.

(c) (1) If a final rule of the Secretary is disapproved by the Congress under subsection (a)(2), then the Secretary may promulgate a final rule which relates to the same acts or practices as the final rule disapproved by the Congress in accordance with this subsection. Such final rule—

(A) shall be based upon—

(i) the rulemaking record of the final rule disapproved by the Congress; or

(ii) such rulemaking record and the record established in supplemental rulemaking proceedings conducted by the Secretary in accordance with section 553 of title 5, United States Code, in any case in which the Secretary determines that it is necessary to supplement the existing rulemaking record; and

(B) may contain such changes as the Secretary considers necessary or appropriate.

(2) The Secretary after promulgating a final rule under this subsection, shall submit the final rule to the Congress in accordance with subsection (a)(1).

(d) Congressional inaction on, or rejection of a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the final rule involved, and shall not be construed to create any presumption of validity with respect to such final rule.

(e) (1) Any interested party may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this section. The district court immediately shall certify all questions of the constitutionality of this section to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(2) Notwithstanding any other provision of law, any decision on a matter certified under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought not later than twenty days after the decision of the court of appeals.

(3) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under paragraph (1).

(f) (1) For purposes of this section—

(A) continuity of session is broken only by an adjournment sine die; and

(B) days on which the House of Representatives is not in session because of an adjournment of more than five days to a day certain are excluded in the computation of the periods specified in subsection (a)(2) and subsection (b).

(2) If an adjournment sine die of the Congress occurs after the Secretary has submitted a final rule under subsection (a)(1), but such adjournment occurs—

(A) before the end of the period specified in subsection (a)(2); and

(B) before any action necessary to disapprove the final rule is completed under subsection (a)(2); then the Secretary shall be required to resubmit the final rule involved at the beginning of the next regular session of the Congress. The period specified in subsection (a)(2) shall begin on the date of such resubmission.

(g) For purposes of this section:

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "concurrent resolution" means a concurrent resolution the matter after the resolving clause of which is as follows: "That the Congress disapproves the final rule promulgated by the Secretary of Commerce dealing with the matter of _____, which final rule was submitted to the Congress on _____" (The blank spaces shall be filled appropriately.)

(3) The term "rule" means any rule promulgated by the Secretary pursuant to the Coastal Zone Management Act (16 U.S.C. 1450 et. seq.).

(h) The provisions of this section shall take effect on the date of the enactment of this Act and shall cease to have any force or effect after September 30, 1985.

Coastal Zone Management Act of 1972, as amended

Section Summary

Section 301 - Short Title

Section 302 - Contains the Congressional Findings which declare the national interest in the coastal zone; acknowledge the importance of the coastal zone in terms of its ecological, cultural, historic and aesthetic values, and the vulnerability of the coastal zone and its living resources to the impact of man's activities; note the increasing and often competing uses of this area and the need to resolve conflicts among these uses; encourage the states to exercise their full authority over the lands and waters of the coastal zone through cooperation with Federal and local governments and other interests in developing effective management programs; and assert the value of assisting states in meeting needs generated by new or expanded energy activities in or affecting the coastal zone.

Section 303 - Declares the Congressional Policy to preserve, protect, develop, and where possible to restore or enhance, the resources of the coastal zone; to encourage and assist the states in the development and management of the coastal zone through programs which address nine identified coastal management objectives; to encourage the development of special area management plans; and to encourage the participation and cooperation of the public and all levels of government in supporting the purposes of the Act.

Section 304 - Definitions

Section 305 - Authorizes the Secretary of Commerce to make grants to coastal states for the purpose of developing a coastal management program which meets the requirements described in Section 306 below. Defines the mandatory components of a management program to include an identification of the boundaries of the program area; a definition of permissible land and water uses having a direct and significant impact on coastal waters; an inventory and designation of areas of particular concern; a description of appropriate state authorities to control land and water uses; broad guidelines on priorities of uses in particular areas; a description of the organizational structure which will be used to implement the program; a definition of the term "beach" and a planning process for the protection of and access to public beaches and other public coastal areas; a planning process for energy facilities, including their impacts; and a planning process for assessing and lessening the adverse impact of shore erosion. Prior to 1980, the section allowed up to four grants to be made to each state and required 20% state matching funds. Provision was made for an additional grant thereafter if a state met certain criteria relative to the steps yet necessary to meet the requirements of Section 306. The section established maximum and minimum state allocations of the appropriated funds among the eligible states and territories. This section was deauthorized in the 1980 amendments.

Section 306 - Authorizes the Secretary of Commerce to make grants to coastal states to implement their Federally-approved management programs and establishes maximum and minimum state allocations for appropriated funds. It requires that an increasing proportion of Federal funds (up to 30%) be used for activities supporting the nine national coastal management objectives identified in Section 303. It establishes the criteria for Federal approval of a state's management program to be: coordination of the management program with other applicable local, areawide and interstate plans; establishment of an effective mechanism for continuing consultation and coordination between the management agency and other local, interstate, regional and areawide agencies; public hearings; review and approval by the Governor; Gubernatorial designation of a lead agency to receive and administer the grant; State demonstration of appropriate organization and authorities to implement the program; adequate consideration of the national interest in the planning for and siting of facilities which are necessary to meet requirements which are other than local in nature; and provision for procedures to designate specific areas for preservation or restoration. The section specifies the powers which the state must possess and describes three techniques for control of land and water uses which a state may use to meet the Federal requirements. It makes provision for amendment or modification of the approved program and encourages states to inventory and designate areas containing coastal resources of national significance.

Section 306A - Authorizes the Secretary of Commerce to make grants to the states to (1) preserve or restore areas designated under Section 306(c)(9) for those purposes or which contain one or more coastal resources of national significance; (2) redevelop deteriorating or underutilized urban waterfronts and ports; and (3) provide access to public beaches and other public coastal areas. Grants may be used to acquire fee simple or other interests in land; to implement low-cost construction projects; and for other purposes. It provides for 20% state cost-sharing and sets minimum and maximum amounts for the allocation of appropriated funds.

Section 307 - Requires that the Secretary of Commerce, prior to program approval, adequately consider the views of Federal agencies affected by such state programs. Further provides that each Federal agency conducting or supporting activities directly affecting the coastal zone or any Federal agency undertaking any development project in the coastal zone shall support or implement those activities consistent with a state's approved coastal program to the maximum extent practicable. Applicants for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone must certify that the license or permit is consistent with the applicable coastal management program, and such license or permit may not be issued by a Federal agency until the state has concurred or its concurrence is conclusively presumed by its failure to act. Similar provisions, with conditions, are included which apply to persons submitting any plan for the exploration, development of or production from any area leased under the Outer Continental Shelf Lands Act. The provisions of consistency with a state's coastal program also apply to applications for Federal financial assistance. The section also provides for Secretarial mediation in the event of serious disputes and appeals to the Secretary of certain state actions.

Section 308 - Authorizes the Secretary of Commerce to make grants to states: to prevent, reduce or ameliorate any unavoidable loss of any valuable environmental or recreational resource resulting from coastal energy activity; to study and plan for the social, environmental or economic impact of energy facilities; and to support activities by states to carry out their responsibilities under the Outer Continental Shelf Lands Act. Provides for loans and loan guarantees to provide new or improved public facilities and public services which are required as a result of coastal energy activity. The section prescribes how funds appropriated under the section shall be allocated and the terms and conditions of the various forms of financial assistance.

Section 309 - Authorizes the Secretary of Commerce to make grants to any group of two or more states under an interstate agreement or compact, or temporary planning and coordinating entity to coordinate their coastal planning, policies and programs with respect to the contiguous areas of the states; to study, plan and implement unified coastal zone policies with respect to such areas; and to establish an effective mechanism for the identification, examination and cooperative resolution of mutual problems with respect to marine and coastal areas which directly or indirectly affect their coastal zones.

Section 310 - Authorizes the Secretary to conduct a program of research, study and training to support the development and implementation of management programs. Provides that the Secretary may provide grants to coastal states for similar purposes.

Section 311 - Establishes requirements for public hearings conducted pursuant to the Act.

Section 312 - Requires the Secretary to conduct a continuing review of the performance of coastal states with respect to coastal management. Stipulates that each review will include a written assessment and detailed findings concerning the extent to which the state is implementing and enforcing its approved program, addressing the nine national coastal management objectives identified in Section 303, and adhering to the terms of its financial assistance award. Requires that public meetings be conducted as part of the evaluation. Provides for the Secretary to reduce financial assistance under the award if a state is failing to make significant improvement in achieving the nine national coastal management objectives identified in Section 303, or to withdraw program approval and all financial assistance if the state is failing to adhere to, and is not justified in deviating from, its approved program or the terms and conditions of its financial assistance award. Procedures for the withdrawal of program approval are outlined.

Section 313 - Defines the requirements for record keeping and financial audits.

Section 314 - Establishes the Coastal Zone Management Advisory Committee.

Section 315 - Authorizes the Secretary to make grants to states to acquire, develop or operate estuarine sanctuaries to serve as national field laboratories, and to acquire land to provide for the preservation of islands, or portions thereof. Such grants shall be matched by a 50 percent state share.

Section 316 - Establishes the timing and content of the biennial report to Congress on the administration of the Act. It also requires the Secretary to conduct a systematic review of Federal programs to identify conflicts between the objectives and administration of such programs and the purposes and policies of this Act.

Section 317 - Authorizes the Secretary to promulgate rules and regulations pursuant to the Act.

Section 318 - Contains authorization for funds for specific sections of the Act.

APPENDIX B
REGULATIONS

Company Act of 1940 (15 U.S.C. 80a-8), is an American Depositary Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 78o(d)).

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public.

(5) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 per cent of the stock.

(6) The minimum average bid price of such stock, as determined by the Board, is at least \$2 per share, and

(7) The issuer has at least \$1 million of capital, surplus, and undivided profits.

Final Regulatory Flexibility Analysis

The initial regulatory flexibility analysis indicated that because the proposals to amend OTC List criteria involved a mixture of relaxing and tightening changes, it was not easy to judge the overall impact on small domestic entities—primarily those small-sized corporations whose stocks are traded in the over-the-counter market.

No comments were received which would lead the Board to conclude that the adoption of these amendments would have a significant economic impact on a substantial number of small entities.

By order of the Board of Governors of the Federal Reserve System, May 12, 1982.

William W. Willes,
Secretary of the Board.

[FR Doc. 82-13482 Filed 5-19-82; 8:46 am]

BILLING CODE 3210-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 931

Improving Coastal Management in the United States

Correction

In FR Doc. 82-13359, appearing at page 21009, in the issue of Monday, May 17, 1982, make the following correction:

On page 21024, in the first column, remove the heading Subpart C—[Removed] appearing after the table of Contents for Subpart D;

On page 21024, in the first column, before paragraph 1., add:

§ 931.140 through § 931.152 (Subpart L) [Removed]

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-18737; File Nos. S7-855, 855, 922 and 923]

Net Capital Requirements for Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of Amendments to net capital rule.

SUMMARY: The Commission is amending parts of its net capital and customer protection rules for broker-dealers. The amendments will alter the haircuts under the net capital rule on most debt securities, preferred stock and redeemable securities of certain registered investment companies. The amendments will also affect the treatment of securities borrowing and fails to deliver by broker-dealers under both rules. Finally, the Commission is adopting a new provision in the net capital rule designed for a unique class of broker-dealer generally known as municipal securities broker's brokers.

EFFECTIVE DATE: June 25, 1982.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Division of Market Regulation (202) 272-2372, 500 N. Capitol Street, Washington, D.C. 20549

SUPPLEMENTARY INFORMATION: In January 1982, the Commission announced the adoption and proposal of amendments to the net capital and customer protection rules that, taken together, would significantly revise the capital requirements for broker-dealers.¹ The amendments as adopted or proposed for comment represented the Commission's conclusion, following a comprehensive examination of the financial responsibility requirements applicable to broker-dealers and the capacity of the securities industry to avoid operational and financial problems encountered in the "Paperwork Crisis" of the late 1960's, that those capital requirements could be revised without creating undue risks to investors.

The amendments that were adopted by the Commission in January 1982,

generally, reduced by half (from 4% to 2%) the percentage requirement of net capital for those broker-dealers which have elected the alternative method of calculating net capital, allowed the use of revolving subordinated loans, moderated the treatment of short securities differences and allowed elimination from the Reserve Formula² of securities borrowed from customers under certain circumstances. The amendments that were proposed in January 1982 included changes in the percentage deductions ("haircuts") from the market value of certain securities in the proprietary accounts of broker-dealers in computing capital requirements; changes in the treatment of municipal securities that have no ready market; changes in the treatment of fail to deliver contracts that allocate to fail to receive contracts ("matched fails") under the Reserve Formula; and changes in the time period before a deduction must be taken for fail to deliver contracts. The Commission also proposed to amend the customer protection rule to change the treatment of securities borrowed by broker-dealers from persons other than brokers, dealers, or municipal securities dealers under the possession or control requirement of that rule. The effective date of the amendments that were adopted by the Commission in January 1982 was delayed until May 1, 1982.

Following the Commission's actions in January 1982, self-regulatory organizations and the Commodities Futures Trading Commission (the "CFTC") have taken action affecting the capital requirements of many broker-dealers. The New York Stock Exchange (the "NYSE") adopted a rule proposal reducing the early warning levels, thereby reducing, as a practical matter, the net capital required of member firms. The Board of Directors of the National Association of Securities Dealers, Inc. (the "NASD") has approved a substantially similar rule and has submitted that rule to its membership for approval. The CFTC has proposed for comment amendments that would substantially parallel the amendments to the net capital rule adopted by the Commission.

The Commission is adopting the amendments proposed in January 1982, modified, as discussed below, to account for certain of the comments received. The Commission, however, declines to revisit at this time, as several commentators suggested, certain issues considered in January 1982. In view of the significant reduction in overall

¹ Securities Exchange Act Release Nos. 18417-18420 (Jan. 12, 1982), 47 FR 4512 (Jan. 25, 1982).

² 17 CFR 240.15c3-3a.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

15 CFR Part 923, 927, 928, and 931

Improving Coastal Management in the United States

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: Pub. L. 96-464, the Coastal Zone Management Improvement Act of 1980 (the Act), which amended the Coastal Zone Management Act of 1972 (CZMA), requires the Secretary of Commerce to issue regulations for improving the administration of the national coastal zone management program established by the CZMA. This notice sets out final rules for: (1) Encouraging states to achieve significant improvements in meeting certain national coastal management objectives; (2) allocating Federal financial assistance among eligible states to administer approved state coastal management programs; (3) awarding Federal financial assistance to eligible states to mitigate adverse coastal impacts caused by coal and alternative ocean energy activities; and (4) reviewing and evaluating the performance of approved state coastal zone management programs and coastal energy impact programs.

EFFECTIVE DATE: The final rules will become effective unless, within 60 calendar days of continuous session after submission to the Congress for review, both Houses of Congress adopt a concurrent resolution disapproving the final rules. Notification of the effective date will be published in the Federal Register. Until these regulations become effective, they shall provide guidance to federal agencies and state governments for implementing the CZMA.

FOR FURTHER INFORMATION CONTACT: JoAnn Chandler, Director, Vickie Allin or Nancy Carter, Office of Policy, Evaluation and External Relations (202) 634-4245.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice of final rulemaking is issued under authority of Sections 306 and 317 of the CZMA and Sections 3, 7, and 9 of the Act.

II. Regulatory Issues

A. General Background

The CZMA was enacted to encourage and assist states in developing and implementing management programs to preserve, protect, develop, and when possible, to restore or enhance the resources of our nation's coast. The primary purpose of the 1980 amendments is to reaffirm the nation's commitment to the wise use and management of our coastal resources through the coastal zone management program. To this end, key provisions of the CZMA were strengthened to encourage states to significantly improve their coastal management programs.

On December 30, 1980, NOAA issued an advance notice of proposed rulemaking (ANPR) to solicit public comment on rules to implement the amendments to the CZMA. Specifically, the ANPR solicited comments on rules for: (1) Encouraging states to achieve significant improvements in meeting certain national coastal management objectives (Sections 303 and 306(a)); (2) Allocating Federal financial assistance among eligible states to administer approved state coastal management programs (Section 306(b)); (3) awarding Federal financial assistance to eligible states to mitigate adverse coastal impacts caused by coal and alternative ocean energy activities (Section 308(c)(3)); (4) reviewing and evaluating the performance of approved state coastal zone management programs and coastal energy impact programs (Section 312); (5) enhancing the protection of nationally significant coastal resources (Section 306(i)); (6) awarding grants to eligible coastal states for preserving specific coastal areas, redeveloping urban waterfronts and ports, and providing access to public beaches and coastal waters (Section 308A); and, (7) awarding grants to assist eligible states in preserving islands (Section 315). NOAA received 38 comments before the close of the comment period on January 31, 1981. In February 1981, NOAA distributed issue papers to approximately 400 interested parties on a mailing list established for this rulemaking. Sixty-six comments were received.

Based on comments on the ANPR and the issue papers, NOAA prepared proposed rules. Because of budgetary constraints and the need to eliminate unnecessary regulations, only those regulations that were statutorily mandated and necessary to the operation of the coastal management programs were proposed. Therefore, the NPR did not include regulations

implementing Sections 306(i), 308A and 315.

A Notice of Proposed Rulemaking was published on pages 51393-51402 of the Federal Register of October 20, 1981, inviting comments for 30 days ending November 20, 1981. Comments were received from 32 sources including federal and state government agencies, regional organizations and interest groups.

B. Legislative Amendments and Issues Resolved Through Rulemaking

1. *Improving Coastal Zone Management—Sections 303/306.* The provisions of the CZMA paraphrased below relate to improving coastal management, and Section 5(b) of the Act requires the Secretary to issue regulations for their implementation.

Section 303 clarifies national coastal policy by describing specific national objectives that warrant full consideration during the implementation of approved state coastal management programs.

Section 306(a) encourages more effective coastal management by requiring states with approved programs to expend an increasing proportion of administrative grants (up to a maximum of 30 percent unless a state agrees to a higher percentage) on activities that will result in significant improvement in achieving the national coastal objectives specified in Section 303.

The final rules implementing sections 303 and 306(a) broadly define "significant improvements" to include state accomplishments that add elements to current management programs or strengthen existing program elements. They provide that selection of management activities designed to result in significant improvements will be negotiated between OCZM and individual states, require states to expend in the second year of funding at least 20 percent of their Federal section 306 financial assistance award on significant improvement activities and increase expenditures by one percent in each succeeding year. They also provide that a state failing to agree to pursue significant improvements may not receive any financial assistance under Section 306 to implement its program.

Generally, the final significant improvement regulations provide for a flexible and cooperative approach so that coastal states and NOAA can effectively deal with the phase down of Federal funding. These final regulations are published as Subpart K of 15 CFR Part 923—the existing Coastal Zone Management Program Development and Approval Regulations.

2. Allocating Administrative Grants—Section 308(b). Section 308(b) requires that administrative grants under section 306 be allocated among coastal states with approved programs in accordance with rules and regulations that take into account "the extent" of the shoreline covered by the plan, "the population" of the area covered by the plan, and other relevant factors.

The allocation formula in the final regulations is simple, straightforward, and easy to administer and will minimize the disruption in state funding from current levels. The formula is based on (1) an established minimum share allocated to each state and (2) a proportionate share of the remainder to be allocated 60 percent on the length of shoreline, which provides a reasonable approximation of the magnitude of the resource to be managed, and 40 percent on coastal county population which provides a reasonable approximation of the pressures for use of coastal resources. These factors provide continuity with past practice, since they have been used in the allocation process since the inception of the program and will produce the least disruption to the existing funding pattern. Other factors such as nature of the shoreline and need for management funds were considered but not selected because they were too subjective and difficult to quantify. The final allocation regulations supersede the expired allocation regulations published at 15 CFR Part 927.

3. Coal and Alternative Ocean Energy Impact Grants—Section 308(c)(3). New section 308(c)(3) authorizes the Secretary to make grants under the Coastal Energy Impact Program (CEIP) to eligible coastal states for preventing or mitigating unavoidable environmental and recreational losses in the coastal zone resulting from the "transportation, transfer or storage of coal or from alternative ocean energy activities." Funds must be allocated among eligible states in accordance with "rules and regulations . . . which shall take into account the number of coal or alternative ocean energy facilities, the nature of their impacts, and other relevant factors . . ." (Section 308(c)(3)(B)).

The final regulations implementing section 308(c)(3) have been combined with existing regulations implementing sections 308(c)(1) and (2) and revise Subpart D (Planning for the Consequences of Energy Facilities) and Subpart L (OCS State Participation Grants) of 15 CFR Part 931—the Coastal Energy Impact Program regulations. The final regulations, therefore, govern the award of all grants under section 308(c).

Consolidation of the three categories of "c" grants under one subpart (new subpart D) will greatly simplify the regulations for administering the CEIP.

Under this consolidated approach, states will receive one allotment under section 308(c) that they will then apportion at their discretion among the allowable uses of subsections (c)(1), (c)(2), and (c)(3). To assure the timely expenditure of section 308(c) funds, the final regulations require states to submit applications before the end of the fiscal year for which allotments were made; funds not applied for by then can be reallocated among other eligible states during the next fiscal year.

The final regulations also set forth the objectives of providing financial assistance to coastal states under section 308(c) and its allowable uses, describe procedures for allotting section 308(c) funds among eligible coastal states and for applying for assistance under section 308(c). In addition, the final rules broadly define coal to include the waste products of its combustion (ash and sludge), "coal facility" as any facility that utilizes, transports, transfers, stores, handles, processes or produces coal, and "alternative ocean energy facility" to include solar facilities.

The final rules consolidating the financial assistance provisions under section 308(c) are published as Subpart D of 15 CFR Part 931—the Coastal Energy Impact Program regulations—and replace the existing Subpart D and Subpart L.

The consolidation of section 308(c) regulations necessitates some minor conforming changes to Subpart G, which deals with formula grants. These changes are necessary because Subpart D, which is being revised, contained provisions that are required for administering the formula grants provisions of the CEIP regulations.

4. Review of Performance (Evaluation)—Section 312. Section 312 of the CZMA requires a "continuing review of the performance of coastal states with respect to coastal management" and Section 9(b) of the Act requires the promulgation of rules to implement section 312. This review must include a written evaluation that assesses the extent to which the state has: (1) implemented and enforced its approved program; (2) addressed the coastal management needs identified in Section 303(2)(A)–(I) of the CZMA; and (3) adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. Section 312 further requires that a public meeting be conducted as part of each evaluation

and that opportunity be provided for oral and written comment by the public. Evaluation reports must be issued following each review of state performance. The Secretary is directed to reduce financial assistance under Section 306 of the CZMA by up to 30 percent if it is determined that a state is not making significant improvement in achieving the coastal management objectives identified in section 303(2)(A)–(I), and to withdraw program approval and financial assistance if it is found that a state is failing to adhere to, or is unjustifiably deviating from, its approved program or the terms of any grant or cooperative agreement and refuses to remedy the deviation. The statute outlines procedural safeguards (such as notice to the state and an opportunity for a public hearing) that must be observed if the Secretary finds that program approval and financial assistance should be withdrawn.

The basic requirements for continuing review are set forth in the regulations. They provide that evaluations will be conducted in the course of continuing reviews and that written findings will be prepared. The Office of Coastal Zone Management expects that the evaluation of a state's approved coastal zone management program and coastal energy impact program will occur at the same time.

The final evaluation regulations are published as 15 CFR Part 928, replacing the regulations that governed a one-time-only allocation of supplemental funds appropriated for FY 1973. These regulations are no longer necessary for program administration.

The promulgation of regulations implementing section 312 (c), (d) and (e) necessitates some minor changes to 15 CFR 923.82(b)(3), which deals with sanctions for state implementation of unapproved amendments. The changes are necessary because this section references § 923.85, "Termination and Withdrawal of Administrative Funding," which is being replaced by § 928.5(b), "Withdrawal of Program Approval and Financial Assistance."

III. Summary of Significant Comments on NPR and NOAA's Responses

NOAA received comments from 32 sources on the composite rulemaking for Parts 923, 927, 928 and 931.

Commentators included: 1 Federal agency (the U.S. Department of the Interior) 19 coastal states and territories (South Carolina, New Hampshire, New York, Maryland, Michigan, California, Alaska, Louisiana, Oregon, Alabama, Massachusetts, Pennsylvania, Ohio, Florida, Wisconsin, New Jersey,

Connecticut, Government of the Virgin Islands, and the Commonwealth of Puerto Rico); 8 interest groups (Conoco, Inc., Sierra Club, International Association of Drilling Contractors, Coastal States Organization, Texas Eastern Transmission Corp., Edison Electric Institute, Natural Resources Defense Council, and the United Mobile Sportsfisherman, Inc.); and one member of the Coastal Zone Management Advisory Committee. Not all commentators submitted comments on all sections of the regulations. All comments received are on file at the Office of Coastal Zone Management and are available at that office for review upon request. Each of the major issues raised by commentators has been summarized and NOAA's responses provided under the relevant subheading in this section.

A. Part 923, Subpart K—Improving Coastal Zone Management

General. (1) Rather than promulgating regulations, NOAA should concentrate on developing effective phase-down policy. Publication of regulations should be delayed until various proposals for continued funding of coastal management activities are considered.

Response: NOAA is promulgating only those regulations that are statutorily mandated and necessary to the operation of the national coastal management program. Therefore, regulations implementing sections 308(i), 308A, and 315 were not proposed. In addition, the process of promulgating these final rules provided a forum for discussing in detail phase-down issues. The promulgation of these final rules has, therefore, contributed to the development of flexible and effective phase-down policies, which are embodied in these regulations.

(2) NOAA must recognize that achievement of significant improvements are often beyond the control of the coastal management agency. State agencies should not be penalized because, for example, the state legislature failed to enact a statute. State agencies should be judged only on whether they have taken reasonable steps to achieve a significant improvement.

Response: NOAA does not agree that the achievement of significant improvements should be based solely on the performance of the management agency. The national coastal management program is designed to encourage "states" not coastal agencies to exercise their management authorities over coastal resources. The ultimate goal of the significant improvement provisions is to encourage states to

adopt and effectively implement better coastal management policies and procedures. However, not all significant improvements are dependent on approval by forces outside the coastal agency's control. For example, streamlining internal administrative procedures that decrease permit processing time could qualify as a significant improvement. In addition, NOAA may give significant improvement credit on a case-by-case basis for tasks aimed at achieving an improvement that is successfully carried out by the coastal agency even if the complete achievement of the improvement proves to be beyond the control of the coastal agency.

§ 923.102 Significant improvement defined.

(1) Section 923.102(b)(3) appears to encourage states to expand into new geographic areas beyond their defined coastal zones. It is improper to require states to expand their coastal programs beyond boundaries approved by the Secretary of Commerce and imprudent in light of reduced funding levels for management activities.

Response: NOAA does not require or intend to encourage states to expand their coastal zones beyond the boundaries approved by the Secretary of Commerce. However if the state chooses to expand its coastal zone and extend its enforceable program authorities to the expanded area, in response to changed circumstances, the expansion could qualify as a significant improvement. As proposed,

§ 923.102(b)(3) also applies to geographic areas located entirely within the existing coastal zone, e.g., the incremental expansion of an enforceable policy into a new geographic area within the coastal zone. Therefore NOAA will leave that provision intact since it allows for the expansion of the coastal boundary but does not require it.

(2) Significant improvement should be defined as an activity that makes a "measurable or clearly perceptible improvement in the achievement of any of the national interest objectives in section 303(2)(A)-(I)." Such activities should include the following provided they clearly serve the national interest objectives:

Development of natural resource information critical to making informed coastal management decisions;

Development and implementation of state and local strategies; projects, and management programs for coastal resources and uses;

Legal work to clarify or protect the public interest in coastal resources.

Response: The suggested definition provides no baseline from which significant improvements are measured. NOAA has determined that Congress intended states to improve their "approved" programs. Improvements, if they are to be "significant," must go beyond what is expected of an approved program. NOAA will include the first and second suggested example in its list of significant improvements with the qualification that these activities must exceed what is expected of the approved program. The third example is not accepted because it constitutes a basic function of an approved management program.

(3) Section 923.102(b) (1) and (2) should be amended to delete the words "beyond what is required by the approved program" from the definition of significant improvement.

Response: NOAA disagrees. The suggested deletion would remove an essential characteristic of a significant improvement—i.e., that it exceed what is required of an approved management program.

(4) The definition of significant improvement should not be restricted to program amendments or routine program implementation.

Response: Significant improvements are not limited to programs amendments and routine program implementation. Other accomplishments that meet the criteria of § 923.102(a) may also qualify as significant improvements.

(5) The definition of significant improvement encourages states to expand authorities rather than improving existing program elements at a time when Federal financial assistance is being phased out.

Response: The definition of significant improvement allows both the expansion of program scope and the improvement of existing program elements. Therefore, the definition is sufficiently broad to allow states the flexibility to pursue significant improvements that best meet their needs.

(6) In § 923.102(b) delete the word "significant" because the list of examples in that section constitutes accomplishments whose significance must still be determined by testing whether they substantially expand the scope of the program or substantially strengthen the ability of the state to implement or enforce the approved program.

Response: NOAA disagrees. The suggested change would serve to make the definition of significant improvement too vague—i.e., it would leave the decision as to what constituted a significant improvement entirely to the

discretion of the Assistant Administrator. NOAA has clarified the concept of significant improvement by providing specific examples of accomplishments that fit the definition.

(7) The regulations should provide greater detail on what constitutes the national interest as defined in section 303(2)(A)-(I).

Response: Section 303(2)(A)-(I) provides a very broad statement of the national goals that states with approved management programs should be pursuing. Specifying requirements for the national interest under each of the nine national goals in detailed regulations would be difficult because approved programs and conditions vary from state to state. The generic examples of significant improvements provided should give sufficient guidance to NOAA and the states to negotiate significant improvement activities that meet both national and state needs.

(8) Significant improvement should be defined to include "the adoption of a schedule for consultation and coordination with and the giving of adequate consideration to the views of affected federal agencies."

Response: NOAA may accept as a significant improvement any accomplishment aimed at the goal of improving inter-government coordination if it meets the requirements of § 931.102. However, the suggested language is not accepted because it does not specify with sufficient clarity what is required.

(9) There are no specific standards to determine whether a state has achieved a significant improvement. Significant improvement is defined merely as compliance with the existing state program.

Response: Significant improvements and activities leading to significant improvements are broadly defined to allow NOAA and the states considerable flexibility to address a variety of issues in the face of reduced Federal assistance. However, states must describe in detail the activities and expected products associated with each significant improvement before the Assistant Administrator will approve them. Since all significant improvement activities must be aimed at substantially expanding or strengthening the approved program, the statement that merely implementing the program will result in significant improvements is not accurate.

(10) Significant improvement should include adoption of plan amendments such as those applying to the San Francisco Bay Plan.

Response: The adoption of plan amendments, such as those applying to

the San Francisco Bay Plan, will be considered significant improvements if they meet the requirements of § 923.102.

(11) Is "approved program" in § 923.102(a) the same as "approved management program" in § 923.2(d).

Response: Yes. The terms "approved program" and "approved management program" are interchangeable.

§ 923.103 Selection and approval of activities leading to significant improvements.

(1) The proposed regulations subject states to specific deadlines and schedules without imposing similar requirements on OCZM. Therefore § 923.103(d) should be amended by adding the requirement that "the Assistant Administrator will provide the State agency with a schedule for negotiation and a time certain when a decision will be available to the State agency."

Response: NOAA agrees and has amended § 923.103 accordingly.

(2) The regulations should clearly state that significant improvements may take more than one financial assistance award period. Therefore § 923.103(e) should be amended by deleting "if there is a specific reason to identify a longer period."

Response: It is NOAA's policy to encourage the achievement of significant improvements within the period of one financial assistance award because of the potential for rapid phase out of Federal financial assistance. However, the regulations permit significant improvements to be reached over a period greater than one financial assistance award if there is a need for a longer period of time. NOAA has determined that deleting the "specific reason" language would lessen the likelihood that specific improvements in coastal program operations are achieved with currently available Federal funds. However, once a significant improvement is achieved it becomes the responsibility of the State to fund the continued operation of that improvement out of program administration funds.

(3) The process for negotiating significant improvement activities between NOAA and the state should provide for participation by the public, Federal agencies, and other interested parties.

Response: The evaluation of approved programs under Section 312 provides opportunities for public involvement. This evaluation will be used by NOAA to identify program needs that could be addressed with significant improvement funds. Therefore, public participation during the evaluation process will have

a direct bearing on the significant improvement negotiations. However, public participation does not extend to grant negotiations between the grantor and grantee.

(4) States should not be allowed to make significant improvements in only one national interest area.

Response: NOAA will negotiate significant improvement activities with the state on a case-by-case basis. There may be occasions when both NOAA and the state agree that one area merits the application of all of the state's significant improvement funds. Therefore NOAA will not arbitrarily limit the negotiation process.

(5) The regulations provide no indication that state priorities will be considered when significant improvement activities are negotiated. The regulations should provide that state identified needs will serve as the basis for negotiation. Therefore the words "based on the results of the continuing review described in 15 CFR Part 928" should be replaced with "In consultation with the state."

Response: It is NOAA's intent that states take the initiative in identifying significant improvement activities. The selection of these activities will depend on the nature of the individual programs and the particular circumstances in each state. NOAA will base its negotiating position in large measure on the Section 312 evaluation. Although the selection of activities will be negotiated, NOAA has the ultimate responsibility to assure that Federal funds are being used effectively and in accordance with the objectives of the CZMA. However, NOAA is amending § 923.103(a) to stress that the states should take the initiative in identifying significant improvement activities and § 923.103(b) to emphasize that significant improvement activities will be determined "in consultation with the state."

(6) Add the words "agreement included in" before the words "financial assistance award" in the last sentence of § 923.103(d).

Response: This editorial correction is made.

§ 923.104 Establishing the increasing proportion.

(1) The 1% annual increase in expenditures required by § 923.104 for significant improvements is too small. At this rate the maximum of 30% may never be reached by many states. The annual increase should be set at 5% or discretion given the Assistant Administrator to require bigger increases on the basis of deficiencies found during program evaluation.

Response: NOAA is requiring each state to expend a minimum of 20% of its financial assistance award on significant improvement activities during the first year it is required to pursue significant improvements. In light of this large initial expenditure and reduced funding levels, NOAA has determined that a 1 percent annual increase is a realistic requirement that will balance the need to devote an increasing share of federal funds to the improvement of coastal programs with the need to allow states to institutionalize existing program elements.

(2) States that choose to devote more than the required amount for significant improvements should be rewarded by priority access to unused funds or points in the allotment system.

Response: The formula for determining significant improvement expenditures is equitable and simple to administer. Therefore NOAA is reluctant to establish a system that would be difficult to administer and could lead to conflicts among the states.

(3) The regulations should make it clear that "increasing proportion" refers to the amount of the financial assistance actually received by a state.

Response: NOAA agrees and has clarified § 923.104 to emphasize that the amount that must be spent on significant improvements is obtained by multiplying the applicable percentage by the amount of Federal funds actually received.

§ 923.105 Failure to agree to pursue significant improvements.

(1) The failure to pursue significant improvements should not result in a loss of all section 306 funding as required by § 923.105(a) because this requirement can be easily circumvented. States can "pretend" to pursue significant improvements to get full funding since failure to achieve a significant improvement will result in a reduction or withdrawal of at most 30% of the state's 306 funds. Therefore, it would be simpler to allow states to declare their intentions before receiving their grant.

Response: Section 306(a)(3) prohibits the Assistant Administrator from awarding a Section 306 grant unless the recipient state agrees to pursue significant improvements. Therefore, NOAA is statutorily precluded from awarding financial assistance to states that choose not to pursue significant improvements. In addition, NOAA does not accept the assumption that states will "pretend" to be working toward significant improvements merely as a ploy to receive full funding under Section 306.

(2) The withdrawal of all Section 306 funds for failure to pursue significant improvements will impair the operation of state coastal management programs but will not necessarily result in withdrawal of program approval. As a result the review for consistency of needed energy development projects may be delayed. Therefore, energy projects should be exempted from consistency review as soon as funding is withdrawn for failure to pursue significant improvements.

Response: The CZMA does not authorize exempting energy projects from consistency review when a state refuses to pursue significant improvements. Consistency requirements cease to apply only when program approval is withdrawn because a state has refused to remedy a failure to adhere to its approved management program or the terms of its Section 306 financial assistance award. Upon the withdrawal of all Section 306 funds for failure to pursue significant improvements NOAA will closely monitor state program performance to determine whether withdrawal of approval is necessary.

B. Part 927 Allocating Administrative Grants—Section 306(b)

(1) The regulations should establish a 1% minimum and a 10–15% maximum financial assistance award level for any state.

Response: CZMA program funding levels and eligible funding recipients are factors which may vary from year to year. Although Congress has established a 1% minimum financial assistance award level, which is reflected in these regulations, no maximum award level is established.

The Assistant Administrator can adjust the maximum and minimum percentages in the allocation formula to meet the basic funding needs of eligible states (commensurate with the total available funding for the program) in implementing effectively CZMA requirements. The need for flexibility in establishing award level is accentuated as appropriations and funding levels decrease in the phase down of Federal funding.

(2) A state failing to make "significant improvements" should be subject to a 0.7 percent minimum rather than a one percent minimum.

Response: NOAA recognizes that at times implementation of the statutory requirements of section 312(c), when a state fails to meet "significant improvement" requirements, might necessitate reducing the base allocation, and that these reductions might result in an award falling below the 1% minimum

specified in section 306(b) of the Act. In cases where such statutory conflicts arise award levels may fall below the 1% minimum, as prescribed in the actual calculation of the financial assistance award level under § 927.1(f).

(3) The term "tidal shoreline mileage" should be clearly defined and the National Ocean Survey (NOS) methodology for measuring tidal shoreline mileage should be explained.

Response: NOAA uses the NOS definition and mileage figures for marine and island coastal states and territories and presently accepts the shoreline mileage figures measured by the International Coordinating Committee on Great Lakes Basic Hydraulic and Hydrologic Data for states bordering on the Great Lakes. For marine and island states and territories, tidal shoreline is defined as the shoreline of outer coast, offshore islands, sounds, bays, rivers and creeks to the head of tidewater or to a point where tidal waters narrow to a width of 100 feet. The measurements are made using a recording instrument on the largest-scale charts available. The NOS methodology varies slightly from that used by the International Coordinating Committee on Great Lakes Basic Hydraulic and Hydrologic Data, and NOAA is reviewing this inconsistency as raised in comments on the NPR.

For clarification NOAA is adding language to the final rule to more precisely explain shoreline mileage calculations.

Section 927.1(c)(2)(i) now reads "Sixty percent will be allocated based on each eligible state's proportionate share of the length of tidal shoreline mileage and/or Great Lake shoreline mileage of all participating states based on the most recently available, official data from or accepted by the National Ocean Survey . . ."

(4) Factors other than shoreline and population should be considered in the calculation of allocations, such as areas protected or held in trust, shoreline features, rate of population change, and economic significance of the coastal area.

Response: In developing both the issue paper and proposed regulations, NOAA examined the inclusion of other factors (including those above) in the allocation formula. These factors were not selected because they are too subjective and difficult to quantify. The inclusion of coastal county population and shoreline mileage does provide a reasonable approximation of the magnitude and the pressures for use of coastal resources as objective, quantifiable factors. The exclusive use

of these factors provides continuity with past NOAA practice, proposes an allocation formula which is simple and easy to administer, and results in the least disruption in state funding levels.

C. Part 931 Subpart L—Coastal Energy Impact Grants—General

(1) The relationship of new subpart D to existing subparts D and E should be clarified.

Response: New subpart D contains guidance and requirements applicable to planning grants found in existing subpart D and guidance and requirements applicable to OCS state participation grants found in existing subpart L. The consolidation is intended to simplify the regulations by eliminating duplicative and unnecessary text. The consolidation is not intended to change the substantive requirements of the planning or OCS participation programs. In addition new subpart L includes guidance and requirements applicable to coal and Alternative Ocean Energy (AOE) activity impact mitigation funds. When new subpart D becomes final and effective, it will supersede existing subparts D and L of 15 CFR part 931. The requirements and guidance with respect to objectives and allowable uses of planning grants funded under Section 308(b)(5)(B) that were in existing subpart D have been transferred to subpart G of 15 CFR Part 931. This transfer was made solely to enable existing subpart D to be superseded in its entirety. The substantive requirements applicable to planning grants funded under section 308(b)(5)(B) are not affected.

(2) Some states have two separate agencies administering the existing provisions of section 308. For example, one state agency may administer impact mitigation assistance under sections 308(c)(1), (b) and (d) while another state agency administers OCS state participation assistance under section 308(c)(2). Under the existing regulations this arrangement did not present any administrative problems because there was a specific allotment of funds under each subsection. Under the proposed regulations it is not clear who will administer the consolidated grant program and allocate available funds among eligible uses. Guidelines should therefore be established to require the expenditure of fixed minimum percentages for eligible uses. In addition, a single agency should be designated to administer the consolidated 308(c) program.

Response: NOAA has determined that the state should decide how to allocate available section 308(c) funds among allowable uses. NOAA assumes that the

state agency designated under § 931.25(a)(4)(i) to administer the CEIP will submit the state's section 308(c) application and that allocation questions will be decided within the state by responsible program officials, including where necessary, the Governor.

(3) The OCS State Participation Grants Program should not be consolidated with other provisions of section 308 because this is a special purpose program whose effectiveness could be diluted by merger.

Response: The various financial assistance programs under section 308(c) are being consolidated to simplify program administration and improve program flexibility. The consolidation should not detrimentally affect the OCS State Participation program because no changes are being made in the substantive provisions of that program. The only change that could affect this program is that the state will decide how much of the total available under section 308(c) will be spent on OCS state participation purposes. Since the Congress has not appropriated specific amounts for each of the allowable uses, NOAA believes it is appropriate for the state to decide how to apportion its funds among allowable uses.

§ 931.37 Limitations on expenditures.

(1) Increasing the matching share to 30 per cent is unfair because the most needy local governments will not be able to benefit from Federal assistance. The Assistant Administrator should be given discretion to vary the matching share as a means of increasing management flexibility.

Response: A matching share of 30 per cent is consistent with NOAA's policy of phasing down CEIP assistance in an orderly manner. Since the funding available for CEIP purposes is limited, increasing the matching share will, in effect, increase the total amount available for impact mitigation. In addition, an increased matching share will encourage the funding of projects with the highest priority.

(2) The significance of the October 17, 1980 date in § 931.37(c)(3)(i) should be clarified.

Response: Section 931.37(c) prohibits the use of section 308(c) funds for mitigating environmental or recreational losses that (1) result from the sale, lease, or rental by a state or local government of property to another party, or (2) that could have been prevented by a reasonable exercise of a state's existing regulatory authority, if the sale, lease, rental or loss occurs after October 17, 1980—the date that section 308(c)(3) was signed into law. This limit on the

eligibility is instituted to prevent the funding of projects for mitigating losses that could readily have been avoided by reasonable state or local action. The October 17, 1980, date allows "grandfathering" state and local actions that occurred before enactment of the 1980 amendments to the CZMA.

(3) To assure that Section 308(c) funds are used to encourage necessary energy development, the following limitation on 308(c) expenditures should be added to § 931.37: "308(c) funds may not be used to pay for any part of a project likely to prevent, delay, or substantially increase the costs of the development of energy facilities otherwise consistent with the state's approved program."

Response: In reviewing section 308(c) applications, NOAA will carry out its responsibility to see that funds are awarded for allowable uses, none of which are for projects that are likely to prevent, delay, or increase the costs of energy development that is otherwise consistent with the state's approved management program. Therefore, the suggested restriction is neither necessary nor appropriate.

§ 931.35 Section 308(c) allotment.

(1) Basing the proposed allotment formula on coastal county population puts smaller states and states that have controlled development in coastal marshes and other ecologically sensitive coastal areas at a disadvantage. It is these areas that face the greatest threat from new energy development. The allotment formula should therefore be based on the percentage increase in coastal population—since this factor better reflects development pressures from new and expanded energy resources. Consideration should also be given to seasonal fluctuation in coastal population.

Response: Coastal county population is a reasonable estimator of the need for impact assistance. In addition, this factor provides continuity with past OCZM practice. Its use will minimize disruptions in the existing pattern of funding. In addition, using 1980 census data provides recognition of population growth.

(2) Too much discretion is allowed the Assistant Administrator to establish the allocation formula and maximum and minimum shares. All the factors that make up the formula should be specified by regulation. A minimum share that equals two percent of the amount available in a fiscal year under section 308(c) or \$75,000, whichever is greater, should be established. The maximum share should be set at 15 percent of the amount available.

Response: Not specifying the allotment formula or the maximum and minimum shares in regulations simplifies the regulations and increases program flexibility.

However, the regulations require the Assistant Administrator to submit any proposed formula, which would include provisions for maximum and minimum shares, to the states for review and comment before allocations are calculated.

(3) Shoreline mileage used in the allocation formula should be clearly defined.

Response: Before calculating allotments § 931.35(c) requires the Assistant Administrator to submit the proposed allotment formula to the states for review and comment. If shoreline mileage is used in the allotment formula it will be the same as used in § 927.1 to allocate section 308 funds. See Comment 3 under *B. Allocating administrative grants* above.

(4) New or expanded coal activities should be given the greatest weight in the allocation formula.

Response: As previously noted, NOAA is not specifying the allotment formula in regulations. The details of the allotment formula will be developed in consultation with the states pursuant to § 931.35(c).

§ 931.31 Objectives.

(1) The phrase "and that permits the coastal states and units of local government a high degree of control and discretion" should be deleted from the statements of CEIP objectives in § 931.31(c) because this phrase is gratuitous and not supported by the legislative history.

Response: NOAA disagrees. The Conference Report (Report No. 94-1298) that accompanied the CEIP legislation states that the coastal state and localities "should make the basic decisions as to the particular needs" that result from energy development and therefore the "discretion" of "Federal officials should be correspondingly limited" (p. 24). Therefore, the objective of allowing states and local governments a high degree of control is consistent with the legislative history of the CEIP and the Administration's policy of returning resource management decisions to the states.

(2) The following objective should be added to the list of CEIP objectives in § 931.31: "To improve and strengthen coastal management in the United States."

Response: This objective is added to emphasize the close relationship

between CEIP and coastal management activities.

§ 931.38 Application for financial assistance.

(1) The proposed regulations improperly impose a requirement that the intra-state allocation process be used for OCS state participation grants.

Response: The proposed regulations were not intended to impose any new requirements on the use of funds for section 308(c)(2)—OCS State participation—purposes. Therefore, § 931.38(b)(3) has been amended to indicate that only planning and coal and AOE impact mitigation assistance must be subjected to the intrastate allocation process.

(2) The application and information requirements under § 931.38 are too burdensome for small construction and land acquisition projects.

Response: NOAA is also concerned about burdensome application requirements and has tried to keep these requirements to a minimum. NOAA has determined that the information requirements specified in § 931.38 are necessary and appropriate to assure compliance with Federal environmental and administrative requirements. NOAA has, however, deleted the requirement for submitting state and local permit applications and approvals for construction projects.

§ 931.32 Definitions.

(1) "Rail transport facility" should be added to the list of coal facilities in § 931.32(b)(1).

Response: NOAA agrees and has added the term "rail transport facility" to § 931.32(b)(1)(v).

(13) The regulations should clarify Section 308(c) funds may be used to mitigate the impact of the disposal of ash and sludge, the waste products of burning coal.

Response: NOAA has defined coal to include ash and sludge—the waste products of burning coal. It is NOAA's intent that the impacts of storing and transporting these waste products for the purpose of disposal be eligible under Section 308(c). NOAA has determined that definition of coal facility is sufficiently broad to include facilities involved in ash and sludge disposal and that amending the regulations is not necessary.

§ 931.34 Allowable uses.

(1) The regulations provide no assurance that funds authorized under section 308(c)(3) are expended for mitigating the impacts of coal or AOE activities.

Response: The new regulations appropriately place responsibility on the state for allocating available funds among allowable uses. As noted previously, Congress has not appropriated specific amounts for each of the allowable uses. In the absence of this guidance, NOAA has determined that the states should determine their needs and funding priorities.

D. Part 928 Review of Performance—Section 312

§ 928.1 General.

(1) The statement in § 928.1(b) that "these regulations may be supplemented by procedural memoranda issued periodically by the Office of Coastal Zone Management . . ." is unnecessary and might lead to confusion regarding the legal enforceability of the procedural memoranda.

Response: In response to comments on the Issue Paper on Review of Performance, NOAA shortened and simplified the proposed rules by eliminating detailed procedures from the regulations and retaining only the basic requirements of continuing review and evaluation. The purpose of the procedural memoranda is to provide a more detailed statement of how these basic requirements will be met. NOAA wishes to remove any possible ambiguity concerning the legal status of the procedural memoranda and, therefore, has deleted this reference from the regulations.

§ 928.2 Definitions.

(1) NOAA should change the definition of "justifiable" to state that the principal criterion for determining whether a deviation is justifiable is whether it is beyond the control of the state coastal program manager, not whether it is beyond the control of the state. The proposed criterion—beyond the control of the state—is unrealistic and does not recognize that state coastal programs are constrained in their ability to influence governors and State legislatures.

Response: NOAA disagrees with this comment. It is appropriate to assess whether or not a deviation is beyond "state" control. All coastal management programs must be approved and transmitted to NOAA by the governor of the state. Therefore, although NOAA acknowledges that state coastal program managers frequently are limited in their ability to influence state governors and legislatures, their programs are "state" programs and the states are responsible for carrying them out.

(2) NOAA should limit the criteria for determining whether a deviation is justifiable *only* to those criteria currently enumerated in the proposed definition. All of the criteria should be spelled out in the regulations in order to provide fair and predictable administration and the determination of whether the criteria are met should involve the public.

Response: It is not possible or desirable to define in advance the universe of criteria for assessing "justifiability." The purpose of the criteria identified in the definition is to provide the states and the public with information concerning how the "justifiability" determinations will be made. However, it is impossible to anticipate every conceivable kind of deviation and, therefore, impossible to define in advance the universe of criteria for evaluating them.

NOAA disagrees that the public should be involved in the "justifiability" determinations. While public participation in the program is vital, the statute requires the determination to be made by the Secretary. In making each determination, the Secretary will consider all available information, including public comments on the review of the State's performance.

(3) The definition of "work program" should not be formalized in the regulations. Work programs are usually designed at least a year in advance and, hence, represent a target or "guesstimate" of what a state coastal program feels reasonably able to undertake. There is no benefit in formalizing this document in the regulations.

Response: This comment reflects a misunderstanding of the purpose of defining this term. The definition is included in order to provide a basis for continuing review and evaluation of approved programs if Federal financial assistance ends. In this case, the states would provide to NOAA the same documentation they would need to provide to their state governments or other funding sources describing the work tasks they are undertaking during a particular time period, and NOAA would review the material to determine if the program implementation continued to meet or exceed the threshold requirements for approvability.

This work program must be distinguished from the work program that is a part of the Federal financial assistance award. The work program that is part of the award carries with it a commitment from the state to complete each work task successfully or face reduction or withdrawal of financial assistance. However, if Federal

financial assistance ends, obviously there will be no such sanction and the review will simply determine whether the state program continues to meet the requirements for approvability, in order that the state may continue to exercise Federal consistency. Because this distinction was not made clearly, we have added clarifying language to the definition of "work program" and to the use of the term "work program" in the continuing review procedures.

§ 928.3(b) Continuing review procedures.

(1) NOAA should limit state reporting requirements to one report per year.

Response: NOAA understands the need to limit the paperwork burden on the states. To this end, the periodic performance reports required for financial assistance awards are being used to accommodate information needs for continuing review and evaluation. NOAA will make every effort to limit additional information requirements by assessing carefully all information available in-house and targeting requests to fill specific information gaps. However, regular information is required for NOAA's program administration responsibilities—including technical monitoring of awards and continuing review and evaluation. The current information requirements—performance reports and a supplemental information request for evaluation—represent the minimum requirements for information necessary to carry out our responsibilities.

(2) The regulations should State explicitly that a site visit will normally be a part of each evaluation, unless fiscal constraints are so severe that such visits are precluded. Site visits are extremely valuable and the presumption in the regulations should be that they will occur.

Response: NOAA agrees with the intent of this comment. The regulations already provide that the Assistant Administrator may conduct site visits as a part of the evaluation. The discretionary "may" is used to provide necessary flexibility to adjust to funding constraints. Because the recommended standard—"fiscal constraints * * * so severe that such visits are precluded"—is also discretionary, NOAA has determined that no change should be made in the regulatory language.

(3) The discretionary "may" in the third line of § 928.3(b)(5), which provides that states "may" have two weeks from receipt to review draft findings, should be changed to "shall."

Response: NOAA agrees with the comment and we have made the suggested change.

(4) The regulations should specify that draft findings be made available to affected Federal agencies at the same time they are sent to the states.

Response: Draft findings are available to affected Federal agencies, or anyone else, upon request.

(5) Since the proposed rules impose time deadlines on the states in the conduct of evaluations, it is only fair that NOAA should also impose deadlines on itself. In addition, the deadlines should recognize the need for leadtime to respond to findings. Two types of specific suggestions for NOAA deadlines were made:

(a) Issue final findings at least 90 days before the expiration of a state's Federal financial assistance award, and at least 30 days before the state coastal management agency must submit its proposed budget.

(b) Issue final findings within a certain time period after receipt of state comments on the draft findings. The suggested time periods ranged from two weeks to 60 days.

Response: NOAA recognizes the states' need for leadtime to incorporate the results of evaluations. However, for two reasons NOAA has determined that it should not commit itself to deadlines tying the date of issuance of final findings to the date of the Federal financial assistance award. First, such a tie could restrict NOAA in the expeditious award of available Federal financial assistance. Second, because many state budget cycles are several months in advance of coastal zone management financial assistance awards, a commitment to issue final findings 30 days before the state coastal zone management agency is required to submit its budget can mean a requirement for final findings 1 to 3 months after the beginning of the coastal zone management financial assistance award. Clearly it would be impossible to conduct a meaningful evaluation so soon after the work program under review has begun.

NOAA is willing, however, to commit itself to deadlines for issuing final findings which are tied to state review and comment on the draft findings. While two weeks is not enough time to give adequate consideration to state comments and produce the final findings, 60 days is usually more than sufficient. Therefore, NOAA has modified the regulations to include a commitment to issue final findings 45 days after receipt of state comments on the draft findings, unless NOAA notifies the state of the need for an extension to allow for further meetings or negotiations.

(6) The current regulatory language implies a mistrust of the states.

Response: The regulatory language is procedural only and does not imply a mistrust of the states. NOAA recognizes its responsibility to assist the state coastal program managers in carrying out their responsibilities for implementing their coastal management programs. However, NOAA is also responsible for overall program administration, which includes continuing review and evaluation. It is NOAA's intent to maintain a balance between these two responsibilities.

§ 928.3(c)(1) Requirements for continuing review of approved state coastal zone management programs—Scope of continuing reviews.

(1) NOAA should delete the phrase "all of the elements" of the approved program in § 928.3(c)(1)(i) and adhere to the statutory language. Since it is clear that Federal financial assistance for state coastal management programs is diminishing, the regulations should recognize that some elements of state programs will have to be reduced and that such reduction is possible without reducing the programs below the threshold requirements for Federal approval.

Response: NOAA agrees that the regulations need to recognize the reality of program adjustments in the face of reduced Federal financial assistance, as long as the adjustments do not reduce program elements below the level required for program approval. To this end, the proposed regulatory language defined the term "approved management program" to mean "those elements of the program required for program approval." This change provides such recognition because the definitions of "adherence" and of "justifiable" are tied to the definition of "approved management program." Since the referenced phrase appears to have caused misunderstanding concerning the focus of continuing review and evaluation, NOAA agrees that it should be removed and has amended the regulations accordingly.

(2) NOAA should add to the scope of review a fourth element on Federal consistency.

Response: The three broad elements of the scope of review come directly from the statute. It is not necessary to add another element on Federal consistency because this is a specific factor in the overall evaluation of one of the broad elements already enumerated—the extent to which the state has implemented and enforced its approved program.

§ 928.3(c)(2) Procedure for assessing adherence to the approved management program.

(1) The phrases "fully" or "fully and effectively" in § 928.3(c)(2)(A), (B), and (C) should be deleted because they imply that states will be able to continue to implement their programs at the same or higher levels while Federal financial assistance declines.

Response: As stated above, NOAA agrees that the regulations need to acknowledge declining Federal financial assistance to states. Although in each case the referenced phrases are preceded by the phrase "the extent to which," they still appear to be interpreted as implying an unfair standard for evaluation. For this reason, NOAA agrees that they should be removed and has amended the regulations accordingly.

(2) The term "enforcing" should be added to § 928.3(c)(2)(A) because this term was added to the statute in the 1980 amendments and needs emphasis in the regulations.

Response: NOAA agrees with this comment and has modified the regulations accordingly.

(3) NOAA should delete the phrase "effectively playing a leadership role in coastal issues" in § 928.3(c)(2)(B) because it is highly subjective and is not a requirement of the program approval regulations.

Response: NOAA disagrees with this comment. Section 923.47 of the program approval regulations requires the state to designate a lead state agency which is capable of monitoring, coordinating and providing direction for its coastal program. As the "focal point for program administration," the lead state agency must play a leadership role in coastal issues in order to coordinate effectively the various state and local agencies with responsibilities for carrying out the program. Therefore, this is an appropriate subject for evaluation.

(4) NOAA should add to § 928.3(c)(2)(C) language recognizing specifically that carrying out the provisions of Federal consistency involves cooperation with Federal agencies to minimize potential conflicts. This point needs emphasis because conflicting requirements could impede or block Federal programs that are vital to the nation as a whole.

Response: This is unnecessary because it is understood that state implementation of Federal consistency involves working with affected Federal agencies to minimize potential conflicts. While it would be possible to enumerate a long list of specific issues for evaluation, such action is contrary to the

President's directive to avoid unnecessary regulation.

§ 928.3(c)(3) Procedure for assessing how the state has addressed the coastal management needs identified in Section 303(2)(A)-(I).

(1) The word "needs" should be changed to "objectives" wherever it appears in this section in order to track the statutory language.

Response: Although it is true that the statute speaks of "objectives" in section 303, it refers to those objectives in section 312 as "coastal management needs." Since these regulations implement section 312, NOAA has used the statutory language from that section of the Act.

(2) The listing of actions taken to address the coastal management needs of section 303, called for in § 928.3(c)(3)(i), is totally inadequate. A full description should be required, as well as information from which NOAA can ascertain what is *not* being done to address the coastal management needs. The commentator made detailed recommendations on the type of information NOAA should seek for this purpose.

Response: This comment reflects a misunderstanding of the proposed language. The listing of actions is merely the first step in the evaluation of how the states have addressed the coastal management needs of section 303. The regulations go on to say that the Assistant Administrator will assess *the extent to which* the state is meeting identified needs—that is, what the state is and *is not* doing—and the effectiveness of its action in addressing these needs.

NOAA disagrees with the suggestion that it require states to submit extensive information for this determination. All of the coastal management needs are not equally important in all states. Rather, they must be assessed within the context of the conditions in the state and the objectives and priorities of the state management program. Just as conditions in the states differ, so does the information needed to assess the states' efforts to address the coastal management needs of section 303. Extensive uniform information requirements are not appropriate under these circumstances and would create a large additional paperwork burden on the states at a time when the Federal government is attempting to reduce these requirements.

§ 928.3(c)(4) Procedure for assessing adherence to the terms of financial assistance awards.

(1) Section 928.3(c)(4)(ii)(D) should contain a requirement that NOAA respond within 30 days after receipt of a request from a state to modify a project.

Response: This suggestion relates to financial assistance award amendment procedures and hence is inappropriate for incorporation into these regulations. The current procedures for processing amendment requests are specified in the program approval regulations at § 923.100. These procedures require NOAA to acknowledge receipt of amendment requests within 10 working days. The notification must indicate NOAA's decision on the request or indicate a timeframe within which the decision will be made.

(2) No modification of approved projects should be permitted under (c)(4)(ii)(D) without opportunity for public review and comment.

Response: NOAA disagrees with this comment. These regulations provide the opportunity for full public participation. In addition the recipient must notify the A-95 clearinghouse of any substantive changes in approved awards. However, public participation does not extend to negotiations between the agency and the recipient on the financial assistance award itself.

§ 928.3(d) Requirements for continuing review of state coastal energy impact programs.

(1) The regulations should require unified coastal zone management and coastal energy impact program evaluation.

Response: NOAA is not sure how to interpret this comment. If the comment means that coastal zone management and coastal energy impact program evaluations should be conducted at the same time, the procedures already provide for this.

§ 928.4 Public Participation.

(1) The public participation section should be modified to:

(a) require a minimum 30-day period for advance notice of public meetings.

(b) provide wider distribution of findings, and

(c) provide for more Federal participation in the evaluations.

Response: NOAA agrees that the regulations should specify a minimum period for advance notice of the public meeting(s). The draft regulations already provide that the Assistant Administrator will publish an advance notice of intent to evaluate at least 45 days in advance of the public meeting(s) in order to put

interested parties on notice that an evaluation is about to occur. Because of frequent modifications of the evaluation schedules, it is often impossible for the states to comply with a 30 day advance notice requirement for public meetings. However, NOAA has modified the regulations to require that states provide a minimum of 15 days notice of the public meeting(s) on their evaluations.

NOAA believes it is not necessary for the regulations to require wider distribution of findings. The regulations already provide for a notice of availability of final findings to be published in the Federal Register, and copies of the findings are available to anyone who requests them.

Similarly, NOAA believes that the regulations already provide for full Federal agency participation in the evaluations. Current procedures provide that affected Federal agencies be contacted before evaluations occur, interviewed during evaluation site visits, and invited to participate in public meetings and/or provide written comments on the evaluations.

§ 928.5 Enforcement.

(1) Section 928.5(a)(2)(ii) should be rewritten to provide that enforcement provisions be triggered by a finding that a state is not achieving "all" of its significant improvement objectives.

Response: The commentator evidently intends that the suggested change would make the provision more restrictive by assuring that states must make significant improvement in all of their objective areas. However, the suggested change actually would make the provision less restrictive by triggering the enforcement provisions only if the Assistant Administrator found that the state was failing to achieve *all* of its significant improvement objectives (i.e., using this language, for example, a state could be failing in seven out of eight areas without triggering the enforcement provisions). In fact, the current regulatory language assures that states will achieve all significant improvement objectives or face some level of reduction of financial assistance. Therefore, NOAA has made no change to the regulatory language.

(2) Section 928.5(a)(2)(ii) should be modified by replacing "achieving" with "performing," replacing "objectives" with "tasks," and adding language to clarify that if a state has notified and negotiated with the Assistant Administrator necessary project modifications, as provided in § 923.103(d), the evaluation will be based upon the projects as modified.

Response: The words "achieving" and "objectives" are taken directly from the

statute and NOAA has determined that they should not be replaced by less precise substitutes. However, the regulations provide that the assessment of whether a state is achieving its significant improvement objectives will be based on the state's progress in accomplishing the significant improvement tasks negotiated between the state and Assistant Administrator before the beginning of each financial assistance award.

Since procedures for project modification are provided in the regulations, it is understood that the evaluations will be based upon approved projects as modified up to the date of the evaluation. Additional regulatory language is unnecessary.

(3) NOAA should not limit itself to reducing a state's funds for failure to make significant improvement only by the amount previously allotted to the task(s) found deficient. While this might be advisable in some instances, it may not be appropriate for all and the statute does not restrict NOAA's action.

Response: NOAA disagrees with this comment. NOAA believes fairness dictates that a state's funds be reduced for failure to make significant improvement only by the amount allocated to the deficient significant improvement task(s). To do otherwise would create a major disincentive for the states to undertake challenging significant improvement activities.

(4) The regulations give NOAA too much discretion in deciding what is "satisfactory progress" toward significant improvement.

Response: NOAA disagrees with this comment. Satisfactory progress will be determined on a case-by-case basis using the specific products and schedules negotiated between the state and the Assistant Administrator for each significant improvement task.

(5) The regulations should provide public notice of the intent to withdraw program approval, and opportunity for public comment and participation at public hearings.

Response: The regulations already contain these provisions in § 928.5(b)(2)(ii) and (iv).

IV. Other Actions Associated With the Notice of Final Rulemaking

A. Classification Under Executive Order (E.O.) 12291 of February 17, 1981

NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The final rules foster improvements in an existing system for administering a program of financial assistance to state and local governments. Therefore, these rules only serve to strengthen the institutional framework for making rational coastal management decisions and will not result in any major direct or indirect economic or environmental impacts.

B. Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required for this notice of final rulemaking. The regulations set forth procedures for distributing Federal financial assistance among participating state governments and for evaluating the performance of those state governments in achieving coastal management objectives. The final rules directly affect only state government entities, which are not "small government jurisdictions" as defined by Pub. L. 96-354, The Regulatory Flexibility Act. The final rules will have no effect on small businesses and a negligible effect on local units of government who participate only through the States.

C. Paper Work Reduction Act of 1980 (Public Law 96-511)

These regulations will impose no information collection requirements of the type covered by Pub. L. 96-511 on affected state governments. Information requirements of Section 312 Continuing Review regulations embody existing procedures and do not constitute any increase in reporting on the part of any affected party.

D. National Environmental Policy Act (NEPA)

NOAA has concluded that publication of the final rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

E. Public Participation

NOAA has actively encouraged public participation in the development of these final rules. NOAA issued an advance notice of proposed rulemaking with a 60-day comment period and

distributed issue papers dealing with the proposed rules to over 400 interested persons on a mailing list maintained by the Office of Coastal Zone Management. NOAA reviewed and considered 38 sets of comments on the ANPR and 68 sets of comments on the issue papers in developing proposed regulations. In addition, meetings and briefings on the regulatory process and the substantive issues involved were held with managers of state coastal zone management and coastal energy impact programs, Federal agency representatives, and interest groups. A notice of proposed rulemaking was published on pages 51393-51402 of the Federal Register of October 20, 1981, and invited comments for 30 days ending November 20, 1981. Comments were received from 32 sources including Federal and state government agencies, regional organizations and interest groups.

List of Subjects in 15 CFR Parts 923, 927, 928, and 931

Administrative practice and procedure, Coastal zone, Grant programs, Natural resources, Energy

William Matuszelski,
Acting Assistant Administrator for Coastal Zone Management.

PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS

For reasons set out in the Preamble, Part 923 of Title 15 of the Code of Federal Regulations is amended as set forth below.

§ 923.85 [Removed]

1. By removing § 923.85.
2. By adding new Subpart K to read as set forth below.

• • • • •

Sec.

- 923.101 General.
- 923.102 Significant Improvement Defined.
- 923.103 Selection and Approval of Activities Leading to Significant Improvements.
- 923.104 Establishing the Increasing Proportion.
- 923.105 Failure to Agree to Pursue Significant Improvements.

Subpart K—Improving Coastal Zone Management

Authority: Sections 303 and 306 of the Coastal Zone Management Act and Section 3 of the Coastal Zone Management Improvement Act of 1980.

§ 923.101 General.

- (a) Statutory citations:
- (1) Section 303(2)

The Congress finds and declares that it is the national policy—

(2) To encourage and assist the States to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to the needs for economic development, which programs should at least provide for—

(A) The protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and their habitat, within the coastal zone.

(B) The management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas of subsidence and saltwater intrusion and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands.

(C) Priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists.

(D) Public access to the coasts for recreation purposes.

(E) Assistance in the redevelopment of deteriorating urban waterfronts and ports, sensitive preservation and restoration of historic, cultural, and esthetic coastal features.

(F) The coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal resources.

(G) Continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies.

(H) The giving of timely and effective notification of and opportunities for public and local government participation in coastal management decisionmaking, and

(I) Assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone.

(2) Section 306(a).

The Secretary may make grants to any coastal State for not more than 80 per centum of the costs of administering such State's management program if the Secretary—

(3) Finds, if such program has been administered with financial assistance under this section for at least one year, that the coastal State will expend an increasing portion of each grant received under this section (but not more than 30 per centum of the grant unless the State chooses to expend a higher percentage) on activities that will

result in significant improvement being made in achieving the coastal management objectives specified in Section 303(2)(A)-(I).

(b) States whose approved programs have been administered for at least one year with Section 306 funds must expend an "increasing proportion" of each subsequent Section 306 financial assistance award on activities that will result in "significant improvement" in achieving certain national coastal management objectives. This subpart defines "significant improvement," describes the process for determining which significant improvement activities a State may perform, establishes the formula for determining "increasing proportion," and sets forth the consequences of failure to pursue significant improvements.

§ 923.102 Significant improvement defined.

(a) A "significant improvement" is an accomplishment that addresses any of the objectives of Section 303(2)(A)-(I) by:

(1) Substantially expanding the scope of the approved program (such expansion of program scope includes, but is not limited to an amendment or routine program implementation), or

(2) Substantially strengthening the ability of the State to implement or enforce the approved program.

(b) Significant improvements include, but are not limited to, the following types of accomplishments:

(1) The adoption of new enforceable policies for coastal decisionmaking of the conversion of nonenforceable (encouragement) policies to enforceable policies. The State (or local government) may adopt new policies by legislation, rulemaking, memoranda of understanding, executive order or other legally sufficient means.

(2) The adoption of refined enforceable policies for coastal decisionmaking including:

(i) More specific standards for the implementation of existing statutes.

(ii) Site specific management plans for areas designated as Areas of Particular Concern and Areas for Preservation or Restoration or other areas beyond what is required by the approved program.

(3) The extension of existing enforceable coastal management policies to new geographic areas beyond what is required by the approved program.

(4) Development of more effective or efficient administration of the approved management program including:

(i) Improved capability of the coastal management agencies to implement State coastal regulatory, planning, and

management requirements contained in the approved program.

(ii) Streamlined intergovernmental coordination and public participation mechanisms.

(5) The following to the extent they exceed what is required by an approved program.

(i) Development of natural resource information critical to making informed coastal management decisions.

(ii) Development and implementation of State and local strategies, projects, and management programs for coastal resources and uses.

§ 923.103 Selection and approval of activities leading to significant improvements.

(a) The State will take the initiative in proposing significant improvement activities. The State's financial assistance application will describe the management activities it will perform and the significant improvements it expects to achieve over the course of the next financial assistance award period. This description will clearly identify specific schedules and expected products.

(b) Based on the results of the continuing review described in 15 CFR Part 928, the Assistant Administrator will determine in consultation with the State if the management activities proposed by the State are likely to result in significant improvement in achieving the coastal management objectives of section 303(2)(A)-(I).

(c) The States and the Assistant Administrator will negotiate an agreement at the beginning of each financial assistance award period establishing: (1) The specific significant improvement objectives to be achieved during the financial assistance award period, (2) The Federal funds to be devoted to each task, and (3) The basis for assessing the State's progress in accomplishing each significant improvement task. The agreement will be included as part of the financial assistance award. There is no requirement that the State address each of the nine significant improvement objectives within an individual financial assistance award period.

(d) If unforeseen circumstances arise that affect the accomplishment of any significant improvement task, the State must provide the Assistant Administrator with prompt notice and negotiate with the Assistant Administrator any necessary changes to the schedule and products before the scheduled completion dates. The Assistant Administrator shall provide the State agency with a schedule for negotiation and a time certain when a

decision will be available to the State agency. Any such changes will be made part of the agreement included in the financial assistance award.

(e) Significant improvements need not be achieved within the period of one financial assistance award if there is specific reason to identify a longer period.

§ 923.104 Establishing the "increasing proportion".

(a) During the first year a State is required to make significant improvements (its second 306 award), it must agree to expend 20 percent of the Federal share of its upcoming section 306 financial assistance award on activities designed to lead to significant improvements. Thereafter, the State must agree to constant incremental increases of at least one percent in each succeeding year. The amount to be spent on significant improvements will be determined by multiplying the applicable percentage by the amount of Federal funds actually received.

(b) In no case may a State be required to expend more on significant improvement activities than the incremental increases established by this section. However, States may voluntarily exceed the minimum requirement on significant improvement expenditures established by this section. The failure to make significant improvements as a result of those expenditures in excess of the minimum requirement will not result in any reduction in financial assistance under the provisions of § 928.5(a), unless such failure results in an unjustified deviation under § 928.5(b).

§ 923.105 Failure to agree to pursue significant improvements.

(a) If a State chooses not to pursue significant improvements in accordance with this subpart, the Secretary must withhold all financial assistance under Section 306. However, a decision not to award section 306 funds does not necessarily require withdrawal of program approval. A State may continue to implement and enforce its approved program with State funds. Under these circumstances, a State will still be able to exercise its Federal consistency review rights under Section 307 and will remain eligible for CEIP funds if it meets all other eligibility requirements.

(b) A discussion of the procedures by which the Assistant Administrator will evaluate whether a State has failed to make significant improvements is contained in 15 CFR Part 928, Review of Performance of State Coastal

Management and Coastal Energy Impact Programs.

Form the reasons set out in the Preamble, Part 927 of Title 15 of the Code of Federal Regulations is revised to read as set forth below.

PART 927—ALLOCATION OF SECTION 306 PROGRAM ADMINISTRATION GRANTS

§ 927.1 Allocation formula.

(a) Statutory Citation (1) Section 306(a).

The Secretary may make grants to any coastal State for not more than 80 per centum of the costs of administering such State's management program . . .

(2) Section 306(b).

Such grants shall be allocated to the States with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided*, That no annual grant made under this section shall be less than one per centum of the total amount appropriated to carry out the purposes of this section; *And provided further*, That the Secretary shall waive the application of the one per centum minimum requirement as to any grant under this section, when the coastal State involved requests such a waiver.

(b) *Minimum/maximum allocation.* The Assistant Administrator may establish minimum and maximum State allocations.

(c) *Allocation formula factors and weighting.* Each State eligible to receive a financial assistance award shall be allocated an amount of the total available Federal funding based on:

(1) A minimum share (established by the Assistant Administrator) of the total funding available for allocation to eligible State coastal management programs, plus

(2) A proportionate share of the remainder to be divided as follows:

(i) Sixty percent will be allocated based on each eligible State's proportionate share of the length of tidal shoreline and/or Great Lake shoreline mileage of all participating States based on the most recently available data from or accepted by the National Ocean Survey, and

(ii) Forty percent will be allocated on each eligible State's proportionate share of the aggregate population of all coastal counties contained in whole or in part within the designated coastal boundary of all eligible State coastal programs based on official data or the most recent U.S. census.

(3) Should any State's base allocation exceed the maximum established by the Assistant Administrator, the excess

amount shall be subtracted from the established maximum and redistributed proportionately among those eligible States with allocations not exceeding the established maximum.

(d) *Use of the allocation formula.* The allocation formula shall be used to establish base level allocations for each State coastal management program eligible to receive Federal funding.

(e) *Adjustment for phase down of Federal funding.* The Assistant Administrator may adjust base level allocations as necessary to implement a phase down of Federal financial support. Any such adjustment shall be implemented in a manner which gives some priority to recently approved State coastal management programs. Options for implementation of a phase down will be submitted to the States for review and comment.

(f) *Calculation of financial assistance award levels.* Actual financial assistance award levels will be set from base level allocations, any adjustments under paragraph (e) of this section, and in accordance with the provisions of section 312(a), (c), and (d). Award levels may fall below the one percent minimum established under section 306(b) for purposes of implementing section 312(c) of the Act.

(Sections 306 and 317 of the Coastal Zone Management Act)

5. Part 928 is revised to read as set forth below:

PART 928—REVIEW OF PERFORMANCE

Sec.

928.1 General.

928.2 Definitions.

928.3 Procedure for conducting continuing review of approved State CZM programs and State Coastal Energy Impact Program.

928.4 Public participation.

928.5 Enforcement.

Authority: Sections 312 and 318 of the Coastal Zone Management Act, as amended.

§ 928.1 General.

(a) These regulations set forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act, and of State coastal energy impact programs pursuant to sections 312 and 318 of the Act. They define "continuing review" and other important terms, and set forth the procedures for:

- (1) Conducting continuing reviews of approved State CZM programs and State coastal energy impact programs.
- (2) Providing for public participation.
- (3) Reducing financial assistance for failure to make significant improvement, and

(4) Withdrawing program approval and financial assistance.

§ 928.2 Definitions.

(a) "Continuing review" means monitoring State performance throughout the period of the work program. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every two years but not more than once every year. Evaluations of coastal energy impact programs will be conducted on a schedule to be determined by the Assistant Administrator.

(b) "Adherence" means to comply with the approved CZM program and financial assistance award or work program.

(c) "Justifiable" means that the State must show that the deviation(s) from the approved CZM program was warranted. This determination will be made by the Assistant Administrator in consultation with the State on a case-by-case basis. The principal criterion to be used in making this determination is the extent to which the deviation was beyond State control. Other criteria, including, but not limited to, the following will be considered:

(1) The extent to which the deviation impairs the ability of the program to achieve its goals and objectives;

(2) Whether the deviation is part of a pattern or is an isolated incident;

(3) The magnitude of the deviation.

(d) "Approved CZM program" means those elements of the program required for program approval by the Secretary, under 15 CFR Part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

(e) "Financial assistance award" means a legal instrument that creates a relationship between the Federal government and another entity (recipient). The principal purpose of the award is the transfer of money or services in order to accomplish a public purpose authorized by Federal statute. The term "financial assistance award" encompasses grants, loans, and cooperative agreements. The following elements constitute the award:

(1) The work program described in the approved application;

(2) The budget;

(3) The standard terms and conditions of the award;

(4) Any special award conditions included with the award;

(5) The statutes and regulations under which the award is authorized; and

(6) Applicable OMB cost principles and administrative requirements.

(f) "Work program" means a description of the tasks to be undertaken by a State for a given time period for the purpose of implementing and enforcing an approved CZM program. The work program is submitted as a part of a Federal financial assistance application, or separately in the absence of Federal financial assistance.

(g) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management or the NOAA Official responsible for directing the Federal coastal zone management program.

§ 928.3 Procedure for conducting continuing reviews of approved State CZM programs and State coastal energy impact programs.

(a) Statutory citations:

(1) Subsection 312(a).

The Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in Section 303(2)(A)-(I), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title.

(2) Section 316. Section 316 includes a provision for a biennial Coastal Zone Management Report which must include:

... a description of the economic, environmental, and social consequences of energy activities affecting the coastal zone and an evaluation of the effectiveness of financial assistance under Section 306 in dealing with such consequences.

(b) Continuing review procedures.

(1) Each State will submit a financial assistance application or work program, whichever is applicable, on a timetable negotiated with the Assistant Administrator, describing the tasks to be undertaken by the State for the purpose of implementing and enforcing its approved CZM program.

(2) For the purpose of evaluation, the States will submit performance reports as specified in the Special Award Conditions, or, if the State is not receiving an award, as negotiated with the Assistant Administrator. The reports will address all areas identified in each State's Performance Report Guidelines.

(3) The Assistant Administrator will collect information on the State CZM programs on a continuing basis. At the beginning of each evaluation, the Assistant Administrator will analyze available information, identify

information gaps, and formulate any additional information needs that will be the subject of a supplemental information request to the State.

(4) The Assistant Administrator may conduct a site visit as a part of the evaluation.

(5) Draft findings of the evaluation will be transmitted to the State. The State will have a minimum of two weeks from receipt of the draft findings to review them and provide comments to the Assistant Administrator. This review time may be extended upon request from the State.

(6) Within two weeks from receipt of the draft findings, a State may request a meeting with the Assistant Administrator to discuss the draft findings and the State's comments.

(7) Within 45 days of receipt of State comments, the Assistant Administrator will issue final findings. This period may be extended upon notification to the State. Notice of the availability of the final findings will be published in the Federal Register. Copies will be sent to the head of the State CZM agency, the State program manager, and any person who requests them.

(c) Requirements for continuing review of approved State CZM programs.

(1) *Scope of continuing reviews.* The continuing review of a State's approved CZM program will include an evaluation of the extent to which the State has:

- (i) Implemented and enforced the program approved by the Secretary;
- (ii) Addressed the coastal management needs identified in Section 303(2)(A)-(I); and
- (iii) Adhered to the terms of financial assistance awards.

(2) *Procedure for assessing adherence to the approved CZM program.*

(i) In reviewing adherence of a State to its approved CZM program, the Assistant Administrator will evaluate all aspects of the "approved CZM program" as defined in § 928.2(d). The evaluation will examine the extent to which:

- (A) The State is implementing and enforcing its approved CZM program;
- (B) The management agency is effectively playing a leadership role in coastal issues, monitoring the actions of appropriate State and local agencies for compliance with the approved CZM program, and assuring the opportunity for full participation of all interested entities in CZM program implementation; and
- (C) The management agency is effectively carrying out the provisions of Federal consistency.

(ii) The findings concerning the State's adherence to its approved CZM program

will be used in negotiating the next financial assistance award or work program, whichever is applicable.

(3) *Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2)(A)-(I).* The assessment of the extent to which the State has addressed the coastal management needs identified in Section 303(2)(A)-(I) will occur as follows:

(i) The State, in its performance report, will provide the Assistant Administrator with a listing of all actions it is taking during the performance report period to address the national coastal management needs and how these actions relate to conditions in the State and the objectives and priorities in the State CZM program.

(ii) The Assistant Administrator, in the evaluation findings, will assess the extent to which the State's actions are targeted to meeting identified "needs" and the effectiveness of the actions in addressing those needs. Based on this assessment, the Assistant Administrator will make findings and recommendations of the extent to which each State is addressing the coastal management needs identified in Section 303.

(iii) The findings and recommendations concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award, if any. The evaluation required by section 312(c), concerning whether a coastal State is "failing to make significant improvement in achieving the coastal management objectives," is detailed in § 928.5(a).

(4) *Procedure for assessing adherence to the terms of financial assistance awards.*

(i) Adherence to financial and administrative terms of each financial assistance award will be determined by the NOAA Grants Office and the Department of Commerce Inspector General. Adherence to programmatic terms of each financial assistance award will be determined by the Assistant Administrator and the NOAA Grants Office. These determinations will be made in accordance with the requirements outlined in these regulations, the findings of a financial audit of the award, and the following criteria:

(A) Compliance with the statute, regulations, and applicable OMB circulars;

(B) Submission of required reports and satisfactory completion of work

products as described in the approved application and within the timeframe specified;

(C) Compliance with Standard Terms and Conditions and Special Award Conditions within the specified timeframes;

(D) Use of award funds only for approved projects; and

(E) Substantive modification of approved projects only with the prior agreement of NOAA.

(ii) The findings concerning adherence to the terms of financial assistance awards will be used in negotiating the next financial assistance award, if any.

(d) Requirements for continuing review of State coastal energy impact programs.

(1) *Scope of continuing reviews.* The continuing review of State coastal energy impact programs will include the following elements:

(i) An evaluation of the State's adherence to the terms of financial assistance awards;

(ii) An evaluation of the relationship between coastal energy impact projects and the approved CZM program;

(iii) A description of energy activities in coastal areas and the impact resulting from these activities; and

(iv) An evaluation of the effectiveness of the coastal energy impact program in dealing with these consequences.

(2) *Procedure for assessing adherence to the terms of financial assistance awards.* See § 928.3(c)(4).

§ 928.4 Public participation.

(a) *Statutory citation, section 312(b):*

For the purpose of making the evaluation of a coastal State's performance, the Secretary shall conduct public meetings and provide opportunity for oral and written comments by the public. Each such evaluation shall be prepared in report form and the Secretary shall make copies thereof available to the public.

(b) *Requirements.*

(1) The Assistant Administrator will publish a Notice of Intent to Evaluate in the Federal Register at least 45 days before the public meeting(s). The notice will include a Statement of the availability of the State's performance report and the supplemental information request.

(2) Each State will issue a notice of the public meeting(s) on its evaluation in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held or take other reasonable action to inform the interested public, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 15 days before the date of the public meeting(s). The State will inform

the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings to the public upon request will be published in the Federal Register.

§ 928.5 Enforcement.

(a) Reduction of financial assistance for failure to make significant improvement.

(1) *Statutory citation section 312(c):*

The Secretary shall reduce any financial assistance extended to any coastal State under Section 306 (but not below 70 per centum of the amount that would otherwise be available to the coastal State under such section for any year), and withdraw any unexpended portion of such reduction, if the Secretary determines that the coastal State is failing to make significant improvement in achieving the coastal management objectives specified in Section 303(2)(A)-(I).

(2) *Requirements.*

(i) The evaluation will examine whether the State is accomplishing the significant improvement tasks in accordance with specific schedules and expected products negotiated between the State and the Assistant Administrator before the beginning of each financial assistance award, in accordance with the procedures in 15 CFR 923.103.

(ii) If the Assistant Administrator finds, during the continuing review, that the State is not achieving one or more significant improvement objectives as negotiated, the State will be given an opportunity to demonstrate that it can accomplish the objective(s), as prescribed in the financial assistance award, before its expiration.

(iii) If the State cannot make this demonstration to the Assistant Administrator's satisfaction, the Assistant Administrator will determine that the State is failing to make satisfactory progress toward significant improvement in accordance with the previously negotiated agreement.

(iv) Based on this determination, the agency will reduce a State's financial assistance award and withdraw any unexpended portion of the current award by no more than the percentage required to be devoted to making significant improvements for that year. The reduction or withdrawal shall be proportional to the amount of funds allocated to tasks that have failed to result in satisfactory progress in achieving significant improvement.

(b) *Withdrawal of program approval and financial assistance.*

(1) *Statutory citation, section 312(d) and 312(e):*

(d) The Secretary shall withdraw approval of the management program of any coastal State, and shall withdraw any financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to, is not justified in deviating from (1) the management program approved by the Secretary, or (2) the terms of any grant or cooperative agreement funded under Section 306, and refuses to remedy the deviation.

(e) Management program approval and financial assistance may not be withdrawn under Subsection (d), unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under this Subsection (d), the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) *Requirements.*

(i) If the Assistant Administrator finds that a State is failing to adhere to, and is not justified in deviating from, its approved CZM program or those terms of its Section 306 financial assistance award specifically implementing the approved CZM program, the agency will provide the State with written notice of this finding and the agency's obligation to withdraw program approval and financial assistance under this title. This notice will set forth the deviation(s) from the approved CZM program or the financial assistance award and will include specifications of the actions that must be taken in order to remedy the deviation(s). The State will be given 30 days from receipt of this notice to respond with evidence of adherence or justification for its deviation(s). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) If the State does not respond satisfactorily within the time allowed, the agency will notify the State of intent to take the proposed action. This notice will be published in the Federal Register and will inform the State of its right to a public hearing.

(iii) If the State does not request a public hearing or submit satisfactory evidence of adherence or justification within 30 days of publication of this notice, the agency will decide whether to withdraw program approval and financial assistance and the agency will notify the State in writing of the decision and the reasons for it. The notification will set forth actions by the State which would cause the Secretary to cancel the withdrawal.

(iv) If the State requests a public hearing within 30 days of publication of the notice of intent to withdraw program approval and financial assistance, the Assistant Administrator will publish 30 days advance notice of the hearing in the *Federal Register* and the newspaper(s) of largest circulation in the State's coastal zone. The hearing will be held in a location convenient to the citizens of the State's coastal zone and a record of the hearing will be maintained. Within 30 days of the completion of the hearing, the agency will make the determination as set forth in (iii), above.

(3) If program approval and financial assistance are withdrawn pursuant to this section, a notice will be placed in the *Federal Register* and Federal consistency under Section 307 of the Act will cease to apply to the State's CZM program.

§ 923.82 (Amended)

6. Section 923.82(b)(3) is amended as follows:

a. After the words, "that State may be subject to," change the word "termination" to "withdrawal."

b. After the end of the sentence, change the reference, "(See § 923.85)" to "(See 15 CFR 923.5(b))."

For the reasons set out in the Preamble, Part 931 of Title 15 of the Code of Federal Regulations is amended as set out below.

1. By removing Subpart L and revising Subpart D to read as set forth below:

PART 931—COASTAL ENERGY IMPACT PROGRAM

Subpart D—Coastal Energy Impact Grants

Sec.

931.30 General.

931.31 Objectives.

931.32 Definitions.

931.33 Eligibility for financial assistance under this subpart.

931.34 Allowable uses.

931.35 Section 308(c) allotment.

931.36 Application for financial assistance.

931.37 Limitations on expenditures.

Subpart C—[Removed]

Subpart D—Coastal Energy Impact Grants

Authority: Section 308 and 317 of the Coastal Zone Management Act of 1972, as amended.

§ 931.30 General.

This subpart sets forth the objectives of providing financial assistance to coastal states under section 308(c) and its allowable uses. It also describes

procedures for allotting section 308(c) moneys among eligible coastal states and for applying for assistance under section 308(c).

§ 931.31 Objectives.

The objectives of assistance under this subpart are:

(a) To help coastal states and units of local government plan for economic, social, or environmental consequences of new or expanded energy facilities and to prevent, reduce, or mitigate losses resulting from the transportation, transfer, or storage of coal or from alternative ocean energy activity.

(b) To help coastal states develop the capability to participate effectively in Federal policy, planning, and managerial decisions relating to the development of OCS oil and gas resources.

(c) To provide financial assistance that is simple to administer and that permits the coastal states and units of local government a high degree of control and discretion.

(d) To improve and strengthen coastal zone management in the United States.

§ 931.32 Definitions.

(a) *Coal*. The term "coal" includes all forms of anthracite and bituminous coal, peat, coke, and lignite. In addition to these substances, the term includes ash and sludge, which are waste products of burning coal.

(b) *Coal Facility*. The term "coal facility" includes the following:

(1) Any facility used in the transportation, transfer, or storage of coal. Such facilities include, but are not limited to:

- (i) Coal loading docks
- (ii) Coal barging terminals
- (iii) Coal ports
- (iv) Coal storage yards
- (v) Rail transport facilities

(2) Any facility that converts coal into another form of energy useable by consumers or industry including but not limited to:

- (i) Power plants
- (ii) Synthetic fuel plants
- (iii) Liquefaction plants

(3) Any facility that utilizes, transports, transfers, stores, handles, processes or produces coal, including mines and steel mills.

(c) *Alternative Ocean Energy (AOE) Facility*. The term "alternative ocean energy facility" means:

(1) Any facility located in or seaward of, the coastal zone whose primary purpose is to utilize the mechanical, chemical, physical, biological or thermal properties of ocean or lake waters in the conversion of those properties into a form of energy useable by consumers or industry. Facilities whose only reliance

on ocean or lake waters is for cooling (such as nuclear power plants), liquefied natural gas facilities, and facilities for the exploration for and development of offshore oil and natural gas do not constitute AOE facilities. Solar facilities will also be considered AOE facilities. AOE facilities include, but are not limited to:

(i) Ocean Thermal Energy Conversion (OTEC).

(ii) Tidal and wave generation of electricity.

(iii) Ocean current generation of electricity.

(iv) Salinity gradient generation of electricity.

(v) Pumped storage generation of electricity.

(vi) Solar generation of electricity.

(vii) Biomass production—e.g., kelp farms.

(viii) Wind generation of electricity that depends on the sea or lake breeze.

(d) *Likely to be affected by OCS energy activity*. The Assistant Administrator will find a coastal state "likely to be affected by OCS energy activity" if the Assistant Administrator determines that:

(1) The state can reasonably expect to be exposed to significant social, economic, or environmental consequences as a result of any OCS lease sale that has taken place or is scheduled to take place under the Department of the Interior's (DOI) Five Year Planning Schedule; or

(2) The state has administrative, policy, operational, or managerial responsibilities under the OCS Lands Act that should properly be supported with Section 308(c) funds.

§ 931.33 Eligibility for financial assistance under this subpart.

(a) A coastal state is eligible for financial assistance if it meets the basic eligibility requirements of Subpart C of this Part.

(b) A unit of local government may apply for assistance under this subpart through the state agency designated under Subpart C of this Part to apply for CEIP assistance.

§ 931.34 Allowable uses.

(a) Funds granted to a state under section 308(c) must be used in accordance with the provisions of this section.

(1) *Planning*. States may use section 308(c) funds to plan for any economic, social, or environmental consequence that has occurred, is occurring, or is likely to occur in the coastal zone as a result of siting, constructing, expanding or operating new or expanded energy

facilities that significantly affect the coastal zone, and for reasonable costs of administering the state coastal energy impact program.

(2) *OCS State participation.* States likely to be affected by OCS energy activity may use section 308(c) funds to carry out their responsibilities under the OCS Lands Act. These responsibilities include participating in the administrative, policy, operational, and managerial decisions relating to management of the oil and natural gas resources of the Outer Continental Shelf.

(3) *Coal and AOE impact mitigation.* States may use section 308(c) funds to design and implement projects (including construction and land acquisition) to prevent, reduce, or mitigate unavoidable losses to valuable coastal environmental and recreational resources resulting from the transportation, transfer, or storage of coal or from AOE activities.

§ 931.35 Section 308(c) allotment.

(a) The Assistant Administrator will develop a formula for allotting available Section 308(c) funds among eligible coastal states. This formula will be designed to estimate the relative need for planning, OCS participation, and coal and AOE impact mitigation among eligible states.

(b) This formula will be based on the number of existing and proposed new or expanded energy facilities, the number of existing and proposed coal facilities that significantly affect the coastal zone, the number of existing and proposed AOE facilities located in or seaward of the coastal zone, the nature of their impacts and other relevant factors deemed appropriate by the Assistant Administrator such as coal tonnage, OCS leasing, production of OCS oil and natural gas, shoreline mileage, and coastal county population.

(c) Each fiscal year, before computing an allotment, the Assistant Administrator will submit this formula to all eligible coastal states for review and comment. If appropriate, the formula will be revised before any final allotments are calculated.

(d) The Assistant Administrator may establish minimum and maximum allotments.

§ 931.36 Application for financial assistance.

(a) Applications for financial assistance under this Subpart may be submitted as soon as states are notified of their allotments under Section 308(c).

(b) Applications for assistance under this Subpart must contain the following certification and information:

(1) A clear and brief description of the projects and activities that will be funded under section 308(c) as they relate to allowable uses under § 931.34. For construction projects, as defined in the Office of Management and Budget Circular A-102, or planning projects that are the first stages of site specific development projects, the following additional information is required:

(i) environmental impact assessment data in detail sufficient to allow the Assistant Administrator to determine whether an EIS will be required under NEPA;

(ii) copies of all necessary major Federal permit or license approvals;

(iii) a Preliminary Engineering Report.

(2) A showing that the state has complied with the requirements of the Project Notification and Review System established by Office of Management and Budget Circular A-95 (Part I) or a showing, if the application for assistance has not been submitted to the PNRS, that a memorandum of agreement for coordinating planning under Section 308 has been established with appropriate areawide clearinghouses in the state's coastal zone, pursuant to Part IV, Attachment A, of OMB Circular A-95.

(3) A certification by the state agency designated under § 931.25(a)(4)(i) that the assistance for the purposes specified in § 931.34(a)(1) and (3) has been or will be allocated within the State in accord with the intrastate allocation process described in Subpart J of this part.

(4) A certification by the state agency designated under § 931.25(a)(4)(iii) that the assistance will be used in a manner that is compatible with the state's developing, or consistent with the state's approved, coastal zone management program.

(c) Allotted funds not applied for by the end of the fiscal year for which allotments were made may be reallocated by the Assistant Administrator among other eligible states.

§ 931.37 Limitations on Expenditures.

(a) Section 308(c) funds expended by a state for the purposes described in § 931.34 may not exceed 70 percent of the actual cost of carrying out projects;

(b) States and local governments may use in-kind contributions as the non-federal matching share in accordance with OMB Circular A-102;

(c) Section 308(c) funds may not be used:

(1) For the prevention, reduction, or mitigation of any loss of an environmental or recreational resource that is directly attributable to the sale, lease, or rental of such resource by a state agency or unit of local government

when the sale, lease, or rental occurs after October 17, 1980;

(2) To pay for that part of a project designed to prevent, reduce, or mitigate the loss of a valuable environmental or recreational resource which is incommensurate with the value of the loss or which can be paid for with funds readily available from any other Federal program;

(3) To pay for that part of a loss:

(i) That occurs after July 28, 1976, and

(ii) That could have been prevented by a reasonable exercise of a state's existing regulatory authority.

(4) For architectural, engineering, and other technical service fees or costs unless:

(i) Compensation is comparable to the cost of similar work awarded through open competitive bidding;

(ii) Compensation is not based on a cost plus a percentage-of-cost; and

(iii) Design and performance standards conform to professionally recognized national standards.

(5) The purchase of movable construction related equipment such as dump trucks and excavating equipment unless expressly authorized by the financial assistance award.

(d) All awards and expenditures of funds under this subpart are subject to the applicable requirements specified in Subpart I.

2. By amending Subpart G as follows:

a. § 931.70 is revised to read as follows:

§ 931.70 General.

This Subpart states the objectives of financial assistance under section 308(b) and describes its allowable uses. It also describes procedures for applying for Section 308(b) grants.

b. In § 931.71 revise the introductory text to read:

§ 931.71 [Amended]

The objectives for providing assistance under section 308(b) are:

c. In § 931.71 add the following paragraph (d):

(d) To help coastal States and units of local government plan for the provision of public facilities and public services required as a result of OCS energy activity.

§ 931.73 [Amended]

d. In § 931.73 the first sentence of paragraph (a) is amended by removing the words "Sections 308(b)(5)(c) and (308)(d)(4)" and inserting in their place the words "Section 308(b)."

§ 931.74 [Amended]

e. In § 931.74 the first sentence of first paragraph (a) is amended by removing the words "Sections 308(b)(5)(c) and 308(b)(4)" and inserting in their place the words "Section 308(b)(5)(c)".

f. In § 931.74 add the following paragraph (d):

(d) Allowable uses under Section 308(b)(5)(B) include:

(1) Planning and study that are necessary to provide new or improved public services that are required as a result of OCS energy activity.

(2) Paying for reasonable costs of administering the provision of assistance under Section 308 to the extent that funding for these administrative costs is not available under section 308(c).

[FR Doc. 82-13359 Filed 5-14-82; 8:45 am]

BILLING CODE 2510-06-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 17

Gross Collection of Exchange-Set Margins

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting new Rule 1.58 which requires that carrying FCMs collect margin for positions carried in omnibus accounts on a gross basis and at a level which is no less than that established for customer accounts by the rules of the applicable market. The Commission is adopting such a rule in order to help to prevent, or at least limit, financial loss to customers, members of the marketplace and the marketplace itself which may be caused by the bankruptcy or insolvency of a futures commission merchant ("FCM") which is not a clearing member of a commodity exchange. The new rule will require the transfer of certain funds now controlled by an originating FCM to the generally better-capitalized clearing FCM, and it will strengthen the financial early warning system by providing carrying FCMs with greater information about the financial condition of those FCMs for which they are carrying omnibus accounts.

EFFECTIVE DATE: August 18, 1982.

FOR FURTHER INFORMATION CONTACT: Daniel A. Driscoll, Deputy Director, Division of Trading and Markets, Commodity Futures Trading

Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 29, 1981, the Commission published a proposed new Rule 1.58 which would require that carrying FCMs collect margin for positions carried in omnibus accounts on a gross basis and at a level which is no less than that established for customer accounts by the rules of the applicable contract market, as well as proposed amendments to Rule 17.04 regarding reporting of omnibus account positions, and solicited public comment thereon (46 FR 62864). The Commission received twelve written comments on the proposals. The commentators include eight FCMs and two commodity exchanges, one of which submitted two comment letters, as well as the National Futures Association ("NFA"). The Commission has carefully considered all of the comments received in response to the proposed rules.

II. Discussion

As the Commission stated in the Federal Register release announcing the proposal of Rule 1.58, the Commission believes that gross collection of exchange-set margins will strengthen the industry and enhance customer protection by moving segregated funds into the normally better-capitalized hands of a clearing member. The Commission recognizes the key role of the clearing members in assuring financial integrity and correcting potential problems.

As the Commission also stated in the Federal Register release announcing the proposal of Rule 1.58, the most significant difference in the financial monitoring program of the exchanges and the Commission's financial monitoring program is the information that the exchanges have about clearing members which the Commission does not have about non-clearing FCMs which carry their accounts with a clearing member FCM on an omnibus basis.¹ Such information is primarily developed from the pay and collect information that is generated by the individual clearing organizations. While the Commission could conceivably obtain such information directly from all originating FCMs, such a process would be cumbersome and would not involve an independent source such as a

carrying FCM or clearing organization. In addition to the information available to the exchanges about their clearing members through the pay and collect data, there is an informal information network existing among the FCM community. While such information is often communicated to exchange personnel, it rarely, if ever, reaches the Commission. To compensate for the information which is routinely obtained by the exchanges about their clearing member FCMs but which is not readily available to the Commission or in certain instances, any self-regulatory organization with respect to omnibus accounts, the Commission has determined to adopt a rule which will require the gross collection of exchange-set margins. In this regard, pay and collect information is unavailable even to the exchanges regarding omnibus accounts where the originating FCM is a member of one exchange placing orders for execution on another exchange where the FCM is not a member. Rule 1.58 will thus apply to all omnibus accounts and not only to those omnibus accounts of originating FCMs which are not members of any commodity exchange, as some commentators suggested.

One concern expressed by some commentators related to the investment of customer funds. The Commission stated in the Federal Register release announcing the proposal of Rule 1.58 that, if the rule were adopted, an originating FCM would not be precluded from depositing United States Treasury bills or some other acceptable form of interest-bearing instrument with the carrying FCM and would not, therefore, have to forego the interest currently being earned on segregated funds. One commentator stated that Treasury bills or other interest-bearing instruments would be acceptable to a clearing FCM for initial margin purposes. That commentator further stated, however, that since daily settlement obligations or variation margin payments owed by a clearing member to a clearing organization must be satisfied on a cash basis, a clearing member would not accept Treasury bills or other interest-bearing instruments from originating FCMs for any purpose. The Commission disagrees with that statement. The amount of variation margin required of a clearing FCM by a clearing organization should be the same whether the collection of margin with respect to positions held in omnibus accounts carried by the clearing FCM is made on a net or gross basis, and changing from one system to the other should have no bearing upon variation margin payments

¹ While the NFA is expected to develop a financial monitoring program for FCMs, it is anticipated that the NFA will encounter many of the same problems in obtaining information that the Commission has experienced.

application for preacquisition and operation and management awards. The Application for Federal Assistance Standard Form 424—(Construction Programs) constitutes the formal application for land acquisition and development awards.

The application must be accompanied by the information required in Subpart B (preacquisition), Subpart C and § 921.31 (acquisition and development), and § 921.32 (operation and management), as applicable. All applications must contain backup data for budget estimates (federal and non-federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

- (1) State Historic Preservation Office comments;
- (2) Appraisals and title information;
- (3) Governor's letter approving the sanctuary proposal; and
- (4) Written approval from NOAA of the draft or final management plan.

The Standard Form 424 has been approved by the Office of Management and Budget (approval number 0648-0121) for use through September 30, 1983.

§ 921.51 Allowable costs.

(a) Allowable costs will be determined in accordance with OMB Circulars A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments", and A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, local, and Federally Recognized Indian Tribal Governments"; the financial assistance agreement; these regulations; and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period, except as provided under preagreement costs, paragraph (d) of this section.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) Costs incurred prior to the effective date of the award (preagreement costs) are allowable only when specifically approved in the financial assistance agreement. For non-

construction awards, costs incurred more than three months before the award beginning date will not be approved. For construction and land acquisition awards, NOAA will evaluate preagreement costs on a case-by-case basis.

(e) General guidelines for the non-Federal share are contained in OMB Circular A-102, Attachment F. The following may be used by the state in satisfying the matching requirement:

(1) *Preacquisition Awards*—Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) *Acquisition and Development Awards*—Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the sanctuary boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state (pursuant to OMB Circular A-102, Attachment F) may also be used as match. Appraisals must be performed according to Federal appraisal standards as detailed in NOAA regulations and the "Uniform Appraisal Standards for Federal Land Acquisitions". Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match. Land, including submerged lands, already in the state's possession, in a fully-protected status consistent with the purposes of the National Estuarine Sanctuary Program, may be used as match only if it was acquired within a one-year period prior to the award of preacquisition or acquisition funds and with the intent to establish a national estuarine sanctuary. For state lands not in a fully-protected status (e.g., a state park containing an easement for subsurface mineral rights), the value of the development right or foregone value may be used as match if acquired by or donated to the state for inclusion within the sanctuary.

A state may initially use a match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the estuarine sanctuary.

(3) *Operations and Management Awards; Research Funds*—Cash and in-kind contributions (directly benefiting and specifically identifiable to this phase of the project), except land, are allowable.

§ 921.52 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revision of the approved project budget, or extension of the performance period must be submitted to NOAA and approved in writing.

Appendix 1—Biogeographic Classification Scheme

Acadian

1. Northern Gulf of Maine (Eastport to the Sheepscot River)
2. Southern Gulf of Maine (Sheepscot River to Cape Cod)

Virginian

3. Southern New England (Cape Cod to Sandy Hook)
4. Middle Atlantic (Sandy Hook to Cape Hatteras)
5. Chesapeake Bay

Carolinian

6. Northern Carolinas (Cape Hatteras to Santee River)
7. South Atlantic (Santee River to St. John's River)
8. East Florida (St. John's River to Cape Canaveral)

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south)
10. West Florida (Ft. Jefferson to Cedar Key)

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay)
12. Mississippi Delta (Mobile Bay to Galveston)
13. Western Gulf (Galveston to Mexican border)

Californian

14. Southern California (Mexican border to Point Conception)
15. Central California (Point Conception to Cape Mendocino)
16. San Francisco Bay

Columbian

17. Middle Pacific (Cape Medocino to the Columbia River)
18. Washington Coast (Columbia River to Vancouver Island)
19. Puget Sound

Great Lakes

20. Western Lakes (Superior, Michigan, Huron)

proposed change, if adopted, would not have a significant economic impact on a substantial number of small entities. The standard conditions will continue to be placed in foreign air carrier permits. The proposed change only removes a duplicate statement of the conditions.

List of Subjects in 14 CFR Part 399

Administrative practice and procedure, Advertising, Air carriers, Antitrust, Archives and records, Consumer protection, Freight forwarders, Grant programs—Transportation, Hawaii, Motor carriers, Puerto Rico, Railroads, Reporting requirements, Travel agents, Virgin Islands.

Proposed Rule

PART 399—AMENDED

Accordingly, the Civil Aeronautics Board proposed to amend 14 CFR Part 399, *Statements of General Policy*, as follows:

§ 399.13 [Removed and Reserved]

1. Section 399.13, *Standard provisions in foreign air carrier permits*, would be removed and reserved.

2. The Table of Contents would be amended accordingly.

Secs. 101, 102, 105, 204, 401, 402, 403, 404, 405, 406, 407, 408, 409, 411, 412, 416, 801, 1001, 1002, 1102, 1104, Pub. L. 85-726, as amended, 72 Stat. 737, 740, 743, 754, 757, 758, 760, 763, 766, 767, 768, 769, 770, 771, 782, 788, 797; (49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1386, 1481, 1482, 1502, 1504), unless otherwise noted.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 921

[Docket No. 30614-108]

National Estuarine Sanctuary Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: These proposed regulations revise existing procedures for selecting and designating national estuarine sanctuaries and provide guidance for their long-term management. Site identification and selection is to be based on a revised biogeographic classification scheme and typology of estuarine areas. The regulations place a greater emphasis on management planning by individual states early in the process of evaluating a potential site. The regulations reflect a progression from the initial identification of a site, through the designation process, and continued management of the sanctuary by the state after Federal financial assistance has ended. The regulations provide for a programmatic evaluation of sanctuary performance. Clarifications in the financial assistance application and award process have also been made.

DATES: Comments will be accepted until October 3, 1983. After the close of the comment period and review of the comments received, final regulations will be published in the Federal Register.

ADDRESS: Send comments to Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 3300 Whitehaven St., N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: John Epting, (202) 634-4236.

SUPPLEMENTARY INFORMATION: NOAA is publishing revised regulations for implementing the National Estuarine Sanctuary Program, pursuant to Section 315 of the Coastal Zone Management Act, 16 U.S.C. 1461. The Program has been operating under estuarine sanctuary guidelines published June 4, 1974 (39 FR 19922) and proposed regulations published September 9, 1977 (42 FR 45522). Based on experience in operating the program, a number of refinements in operational procedure and policy have been designed. The proposed regulations implement these refinements, which include:

I. Defining the Mission and Goals of the Program

The Mission Statement and Goals for the continued implementation of the National Estuarine Sanctuary Program stress the importance of designating estuarine areas, through federal-state cooperative efforts, for long-term research and educational benefits.

Though broad in scope, they establish a framework within which specific Program activities are conducted. The Mission Statement and Goals are adopted by the revised regulations (§ 921.1).

II. Revision of the Procedures for Selecting, Designating and Operating Estuarine Sanctuaries

(A) Revision of the Biogeographic Classification Scheme and Proposed Estuarine Typologies. The 1974 guidelines identified 11 biogeographic regions from which representative sites throughout the coastal waters of the United States would be chosen. Section 921.4(b) of the guidelines provided that "various sub-categories will be developed and utilized as appropriate."

In 1981, a study was undertaken to assess the original biogeographic classification scheme and make recommendations, as necessary. A system with 27 subcategories, termed regions, was proposed. The subcategories fit within the original scheme and further define the coastal areas to assure adequate sanctuary representation (Clark, *Assessing the National Estuarine Sanctuary Program: Action Summary*, March 1982, cited as *The Clark Report*).

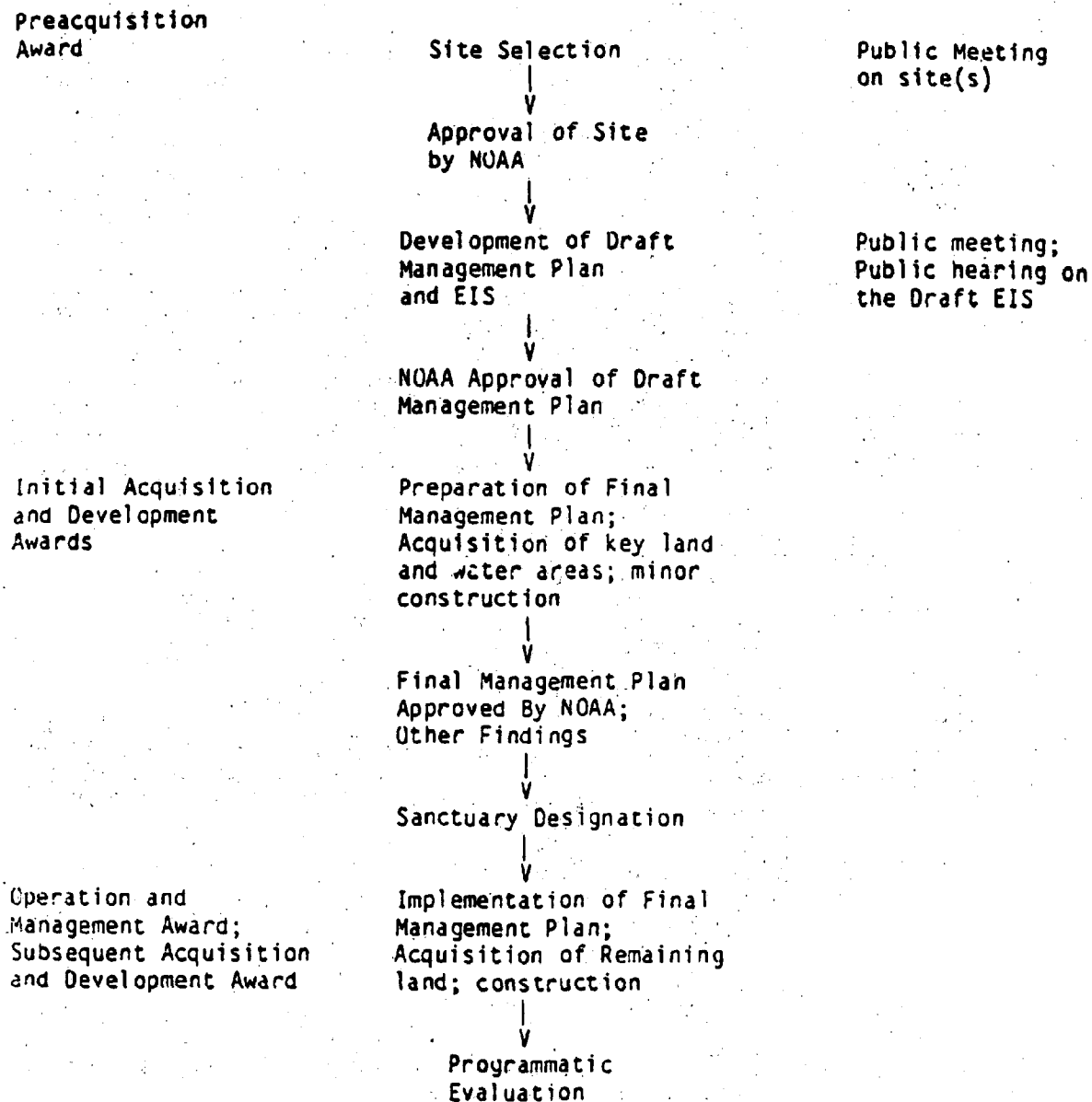
The Clark Report also recommends adopting an estuarine typology system for use in evaluating and selecting sites. The typology system recognizes that there are significant differences in estuary characteristics not related to regional location. Such factors include water source, water depth, type of circulation, inlet dynamics, basin configuration, watershed type, and dominant ecological community.

The proposed regulations adopt the revised biogeographic classification scheme and typology in § 921.3.

(B) *Site Designation*. Eligible states may apply for preacquisition awards to aid in selecting an estuarine site in conformity with the classification scheme and typology system. A description of the site selection process to be carried out by the state, including a provision for public participation in the process, must be submitted for NOAA's approval. These steps require that the procedures for the site selection process be planned prior to implementing the selection process and approval of the preacquisition award. Figure 1 depicts the entire designation process.

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Figure 1. National Estuarine Sanctuary Program Designation Process



After selection of a site, a draft management plan is prepared. Requiring the development of a comprehensive draft management plan in the preacquisition phase is designed to ensure that early in the estuarine sanctuary designation process the state considers management policies, an acquisition and construction plan (including schedules and priorities), staffing requirements, a research component, interpretive and education plans, future funding and other resource requirements, and alternatives. Draft and final environmental impact statements (EIS) are prepared analyzing the environmental and socioeconomic impacts of establishing a sanctuary and implementing the draft management plan. The EIS is prepared in accordance with NEPA procedures, including provisions for public comment and hearings.

Following NOAA approval of the draft management plan and issuance of the EIS, the site enters an initial acquisition and development phase. The state is then eligible for an initial acquisition and development award. During this phase, award funds may be used to purchase land, construct minor facilities (subject to pre-designation construction policies, see § 921.21), and prepare the final management plan. All of these tasks are to be carried out in conformance with the NOAA-approved draft management plan.

The tasks under the initial acquisition and development phase should be completed within two years. At this stage, NOAA must make formal findings, specified in § 921.30, that the final plan has been completed and is approved, that the key land and water areas as specified in the management plan are under state control, and that a memorandum of understanding between the state and NOAA concerning the state's long-term commitment to the sanctuary has been signed. After NOAA makes these findings, the sanctuary is considered "designated". The state then begins implementation of the final management plan, including the construction of necessary facilities and additional land acquisition. The state is also eligible for operation and management awards to provide assistance in implementing the final management plan.

The regulations also provide procedures for the programmatic evaluation of a sanctuary during the period of the operation and management awards (or under the initial acquisition and development award if the sanctuary is not designated within two years) and for a continuing, biennial review of an

estuarine sanctuary after Federal funding has expired. Procedures for withdrawing designation, if a sanctuary fails to meet established standards, have been added (§ 921.35).

Financial assistance requirements and procedures have also been revised. The programmatic information required for each type of award is specified in the appropriate sections—in preacquisition (Subpart B); acquisition and development (Subpart C); and operation and management (§ 921.321). General financial assistance information is provided in Subpart F.

III. Other Actions Associated with the Proposed Rulemaking

(A) *Classification Under Executive Order 12291*. NOAA has concluded that these regulations are not major because they will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed rules amend existing procedures for selecting and processing potential national estuarine sanctuaries in accordance with a revised biogeographic classification scheme and estuarine typologies. These rules establish a revised process for identifying, designating and managing national estuarine sanctuaries. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts.

(B) *Regulatory Flexibility Act Analysis*. A Regulatory Flexibility Analysis is not required for this notice of proposed rulemaking. The regulations set forth procedures for identifying and designating national estuarine sanctuaries, and managing sites once designated. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and the rules will have no effect on small businesses.

(C) *Paper Work Reduction Act of 1980* (Pub. L. 96-511). These regulations will impose no information collection requirements of the type covered by Pub. L. 96-511 other than those already approved by the Office of Management and Budget (approval number 0648-0121) for use through September 30, 1983.

(D) *National Environmental Policy Act*. NOAA has concluded that publication of the proposed rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 921.

Administrative practice and procedure, Coastal zone, Environmental protection, Natural resources, and Wetlands.

Dated: July 29, 1983.

Federal Domestic Assistance Catalog Number 11-420 Estuarine Sanctuary Program
K. E. Taggart,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, it is proposed that 15 CFR Part 921 be revised as follows:

PART 921—NATIONAL ESTUARINE SANCTUARY PROGRAM REGULATIONS

Subpart A—General

Sec.

- 921.1 Mission and goals.
- 921.2 Definitions.
- 921.3 National estuarine sanctuary classification scheme and estuarine typologies.
- 921.4 Relationship to other provisions of the Coastal Zone Management Act and the National Marine Sanctuary Program.

Subpart B—Preacquisition: Site Selection and Management Plan Development

- 921.10 General.
- 921.11 Site Selection.
- 921.12 Management plan development.

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

- 921.20 General.
- 921.21 Initial acquisition and development awards.

Subpart D—Sanctuary Designation and Subsequent Operation

- 921.30 Designation of national estuarine sanctuaries.
- 921.31 Supplemental acquisition and development awards.
- 921.32 Operation and management: Implementation of the management plan.
- 921.33 Boundary changes and amendments to the management plan.
- 921.34 Program evaluation.
- 921.35 Withdrawal of designation.

Subpart E—Research Funds

- 921.40 Application procedures.

Subpart F—General Financial Assistance Provisions

- 921.50 Application information.
- 921.51 Allowable costs.
- 921.52 Amendments to financial assistance awards.

Appendix 1—Biogeographic classification scheme.

Appendix 2—Typology of National Estuarine Areas.

Authority: Sec. 315(1), Pub. L. 92-583, as amended; 86 Stat. 1280 (16 U.S.C. 1461(1)).

Subpart A—General

§ 921.1 Mission and goals

(a) The mission of the National Estuarine Sanctuary Program is the establishment and management, through Federal-state cooperation, of a national system of estuarine sanctuaries representative of the various regions and estuarine types in the United States to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the Program for carrying out this mission are:

(1) Enhance resource protection by implementing a long-term management plan tailored to the site's specific resources;

(2) Provide opportunities for long-term scientific and educational programs in estuarine areas to develop information for improved coastal decisionmaking;

(3) Enhance public awareness and understanding of the estuarine environment through resource interpretive programs; and

(4) Promote Federal-state cooperative efforts in managing estuarine areas.

(c) To assist the states in carrying out the Program's goals in an effective manner, NOAA will coordinate a research and education information exchange throughout the national estuarine sanctuary system. As part of this role, NOAA will ensure that information and ideas from one sanctuary are made available to others in the system.

(d) Multiple uses are encouraged to the degree compatible with the sanctuary's overall purpose as provided in the management plan and consistent with paragraphs (a) and (b) of this section. The sanctuary management plan describes the uses and establishes priorities among these uses. The plan discusses uses requiring a permit, as well as areas where uses are encouraged or prohibited. In general, sanctuaries are intended to be open to the public; low intensity recreational and interpretive activities are generally encouraged. The use levels of these activities are set by the individual state and analyzed in the management plan. Certain manipulative activities, including research and habitat management, may be allowed on a permit basis as specified in the management plan as long as they are consistent with overall sanctuary purposes.

(e) The National Oceanic and Atmospheric Administration (NOAA) may provide financial assistance, not to exceed 50 percent of all actual costs to coastal states, to assist in the designation and operation of national estuarine sanctuaries. Three types of awards are available under the National Estuarine Sanctuary Program. The *preacquisition award* is for site selection and draft management plan preparation. The *acquisition and development award* is intended primarily for land acquisition and construction purposes. The *operation and management award* provides funds to assist in implementing the research, educational, and administrative programs detailed in the sanctuary management plan. At the conclusion of Federal financial assistance, funding for the long-term operation of the sanctuary becomes the responsibility of the state.

§ 921.2 Definitions.

(a) "Act" means the Coastal Zone Management Act, as amended, 16 U.S.C. 1451 *et seq.* Section 315 of the Act, 16 U.S.C. § 1461, establishes the National Estuarine Sanctuary Program.

(b) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his/her successor or designee.

(c) "Estuary" means that part of a river or stream or body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas of the Great Lakes, see 16 U.S.C. 1454 (7).

(d) "National Estuarine Sanctuary" means an area, including all or part of an estuary, and adjacent transitional areas and uplands, constituting to the extent feasible a natural unit, which is established to provide long-term opportunities for research, education, and interpretation.

§ 921.3 National estuarine sanctuary classification scheme and estuarine typologies.

(a) National estuarine sanctuaries are chosen to reflect regional differences in biogeography and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the National Estuarine Sanctuary System includes at least one site from each region. The estuarine typology

system is utilized to ensure that sites in the Program reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in Appendix 1, contains 27 regions.

(c) The typology is presented in Appendix 2.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act and to the National Marine Sanctuary Program.

(a) The National Estuarine Sanctuary Program is intended to provide information to state agencies and other entities involved in coastal zone management decisionmaking pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.* Any coastal state, including those that do not have approved coastal zone management programs under section 306 of the Act, is eligible for an award under the National Estuarine Sanctuary Program.

(b) Where feasible, the National Estuarine Sanctuary Program will be conducted in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431-1434), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate ocean waters as marine sanctuaries to protect or restore their conservation, recreational, ecological, or esthetic values.

Subpart B—Preacquisition: Site Selection and Management Plan Development

§ 921.10 General.

A state may apply for a preacquisition award for the purpose of site selection and preparing the documents specified in § 921.12 (draft management plans and environmental impact statement (EIS)). The total Federal share of the preacquisition award may not exceed \$50,000, of which up to \$10,000 may be used for site selection as described in § 921.11. Financial assistance procedures are specified in Subpart F.

§ 921.11 Site selection.

(a) A state may use up to \$10,000 in Federal preacquisition funds, which must be matched by the state (see § 921.51(e)), to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in subpart F, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the

biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site. Site selection shall be guided by the following principles:

(1) The site's benefit to the National Estuarine Sanctuary Program relative to the biogeographic classification scheme and typology set forth in § 921.3 and Appendices 1 and 2;

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site should, to the maximum extent possible, be a natural system that is capable of sustaining "baseline" monitoring over a long-term period;

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. National estuarine sanctuaries may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced, see § 921.51(e)(ii);

(4) The site's importance for research, including proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas; and

(6) The site's importance to education and interpretive efforts.

(d) Early in the site selection process, the state must seek the views of affected landowners, local governments, Federal agencies, and other parties who are interested in the area(s) being considered for selection as a potential estuarine sanctuary. After the local government and affected landowners have been contacted, at least one public meeting shall be held in the area of the proposed site. Notice of such meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal news media at least 15 days prior to the date of the meeting.

§ 921.12 Management plan development.

(a) After a site is selected by NOAA and the state, the state may request the use of the remainder of the preacquisition funds to develop the

management plan and environmental impact statement. The request must be accompanied by the information specified in subpart F and the following programmatic information:

(1) An analysis of the site based on the biogeographic scheme/typology discussed in § 921.3 and set forth in Appendices 1 and 2;

(2) A description of the site and its major resources, including location, proposed boundaries, and adjacent land uses. Maps, including aerial photographs, are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted;

(4) A list of all sites considered and a brief statement of the basis for not selecting the non-preferred sites; and

(5) A draft management plan outline (see paragraph (b) of this section) and an outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state roles in sanctuary management during the period of federal funding and expressing the state's long-term commitment to operate and manage the sanctuary.

(b) The state shall develop a draft management plan setting out in detail:

(1) Sanctuary goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) A research plan;

(3) An interpretive plan (including interpretive, educational and recreational activities);

(4) A plan for public access to the sanctuary;

(5) A construction plan, including a proposed construction schedule, drawings, and a preliminary engineering report, if a visitor center, research center or any other facilities are proposed for construction or renovation at the site.

Note.—Information on preparing a preliminary engineering report (PER) is provided in "Engineering and Construction Guidelines for Coastal Energy Impact Program Applicants" (42 FR 64830 (1977)), which is supplied to award recipients;

(6) An acquisition plan identifying the ecologically key land and water areas of the sanctuary, priority acquisitions, and strategies for acquiring these areas. This plan should identify ownership patterns within the proposed sanctuary boundaries; land already in the public domain; an estimate of the fair market value of land to be acquired; the method

of acquisition, or the feasible alternatives (including less than fee techniques) for the protection of the estuarine area; a schedule for acquisition with an estimate of the time required to complete the proposed sanctuary; and a discussion of any anticipated problems; and

(7) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the estuarine sanctuary, and expressing the long-term commitment by the state to maintain effectively the sanctuary after Federal financial assistance ends. In conjunction with the MOU and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection of the sanctuary. The MOU shall be signed prior to sanctuary designation. If other MOUs are necessary (such as with a federal agency or another state agency), drafts of such MOUs must be included in the plan.

(c) Regarding the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act on an estuarine sanctuary proposal, the state shall provide all necessary information to NOAA regarding the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan.

(d) Early in the development of the draft management plan and the DEIS, the state shall hold a meeting in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action.

(e) NOAA will publish a Federal Register notice of intent to prepare a DEIS. After the DEIS is prepared, and after it is accepted by the Environmental Protection Agency (EPA), a Notice of Availability of the DEIS will appear in the Federal Register. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed sanctuary. The hearing will be held no sooner than 15 days after appropriate notice by NOAA of the meeting has been given in the principal news media. After a 45-day comment period, a final EIS is prepared.

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

§ 921.20 General.

(a) After NOAA approval of the site, the draft management plan and the draft

MOU, and completion of the final EIS, a state may apply for an acquisition and development award to acquire land and water areas for inclusion in the sanctuary and to construct research and educational facilities in accordance with the draft management plan. The acquisition and development award has two phases. In the initial phase, state performance should work to meet the criteria required for formal sanctuary designation, i.e., acquiring the key land and water areas as specified in the draft management plan and preparing the final plan. These requirements are specified in § 921.30. The initial acquisition and development phase is expected to last no longer than two years after the start of the award. If necessary, a longer time period may be negotiated between the state and NOAA. After the sanctuary is designated, funds may be used to acquire any remaining land and for construction purposes.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient in: (1) Acquiring land and water areas to be included in the sanctuary boundaries; (2) minor construction, as provided in paragraphs (b) and (c) of this section; (3) preparing the final management plan; and (4) up to the point of sanctuary designation, for initial management costs, e.g., implementing the NOAA-approved draft management plan, preparing the final management plan, hiring a sanctuary manager and other staff as necessary, and for other management-related activities. Application procedures are specified in Subpart F.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. Preliminary architectural and engineering plans and specifications and minor construction activities, consistent with paragraph (c) of this section are allowed, if the NOAA-approved draft management plan includes a construction plan and a public access plan.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted under the initial acquisition and development award. No more than five (5) percent of the initial acquisition and development award may be expended on such facilities. NOAA must make a specific determination, based on the EIS, that the construction activity will not be detrimental to the environment and that the PER requirements are satisfied.

(d) Except as specifically provided in paragraphs (a)-(c) of this section, construction projects, to be funded in whole or in part under the acquisition and development award, may not be initiated until the sanctuary receives formal designation, see § 921.30.

Note.—The intent of these requirements and the phasing of the acquisition and development award is to ensure that substantial progress in acquiring the land and waters areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in acquisition has been made, as defined in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

Subpart D—Sanctuary Designation and Subsequent Operation

§ 921.30 Designation of national estuarine sanctuaries.

(a) The AA may designate an area as a national estuarine sanctuary pursuant to section 315 of the Act, based upon written findings that the state has met the following conditions:

(1) A final management plan has been developed and approved by NOAA;

(2) Sanctuary construction and access policies, § 921.21(b)-(d), have been followed;

(3) Key land and water areas of the proposed sanctuary, as identified in the management plan, are under state control; and

(4) A MOU between the state and NOAA ensuring a long-term commitment by the state to the sanctuary's effective operation and implementation has been signed.

(b) The term "state control" in § 921.30(a)(3) does not necessarily require that the land be owned by the state in fee simple. Less-than-fee interests and regulatory measures may suffice where the state makes a showing that the lands are adequately controlled consistent with the purposes of the sanctuary.

§ 921.31 Supplemental acquisition and development awards.

After sanctuary designation, and as specified in the approved management plan, the state may request a supplemental acquisition and development award for construction and acquiring any remaining land. Application procedures are specified in subpart F.

§ 921.32 Operation and management: Implementation of the management plan.

(a) After the sanctuary is formally designated, the state may apply for assistance to provide for operations and

management. The purpose of this phase in the estuarine sanctuary process is to implement the approved management plan and to take the necessary steps to ensure the continued effective operation of the sanctuary after direct Federal support is concluded.

(b) Federal funds of up to \$250,000, to be matched by the state, are available for the operation and management of the national estuarine sanctuary. Operation and management awards are subject to the following limitations:

(1) No more than \$50,000 in Federal funds per annual award; and

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities (i.e., \$10,000 maximum per year).

§ 921.33 Boundary changes and amendments to the management plan.

(a) Changes in sanctuary boundaries and major changes to the final management plan, including state-promulgated regulations affecting the sanctuary, may be made only after written approval by NOAA. If determined to be necessary, NOAA may require public notice and an opportunity for comment. Changes in the boundary involving the acquisition of properties not listed in the management plan or final environmental impact statement (FEIS) require public notice and the opportunity for comment; in certain cases, an environmental assessment will be required.

§ 921.34 Program evaluation.

(a) Performance during the term of the operation and management award (or under the initial acquisition and development award, if the sanctuary is not designated within two years) will be monitored annually by the program office and periodically in accordance with the provisions of section 312 of the Act to determine compliance with the conditions of the award.

(b) After Federal funding expires, NOAA will begin a biennial review of the state's performance in managing the estuarine sanctuary to ensure that the purposes for which the sanctuary were designated are still being maintained.

§ 921.35 Withdrawal of designation.

(a) Upon a finding by the Program Office through its programmatic evaluation (§ 921.34) that an estuarine sanctuary is not meeting the mandate of section 315 of the Act, the national program goals or the policies established in the management plan, NOAA will provide the state with a

written notice of the deficiency. Such a notice will explain the deficiencies in the state's approach, propose a solution or solutions to the deficiency and provide a schedule by which the state should remedy the deficiency. The state shall also be advised in writing that it may comment on the Program Office's finding of a deficiency and meet with Program officials to discuss the finding and to seek a remedy to the deficiency.

(b) If the issues cannot be resolved within a reasonable time, the Program Office will make a recommendation regarding withdrawal of designation to the Assistant Administrator for Ocean Services and Coastal Zone Management (AA).

(c) The state shall be provided the opportunity for an informal hearing before the AA to consider the Program Office's recommendation and finding of deficiency, as well as the state's comments on and response to the recommendation and finding.

(d) Within 30 days after the informal hearing, the AA shall issue a written decision regarding the sanctuary. If a decision is made to withdraw sanctuary designation, the procedures specified in paragraph (e) of this section regarding the disposition of real property acquired with federal funds shall be followed.

(e) Deeds for real property acquired for the sanctuary under acquisition funding shall contain substantially the following provision: "Title to the property conveyed by this deed shall vest in the [recipient of the CZMA section 315 award or other Federally-approved entity] subject to the condition that the property shall remain part of the Federally-designated [Name of National Estuarine Sanctuary]. In the event that the property is no longer included as part of the sanctuary, or if the sanctuary designation of which it is part is withdrawn, then the National Oceanic and Atmospheric Administration or its successor agency may exercise any of the following rights regarding the disposition of the property:

(1) The recipient may be required to transfer title to the Federal Government. In such cases, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the program or project to the current fair market value of the property; or

(2) At the discretion of the Federal Government, (i) the recipient may either be directed to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (minus actual and reasonable selling and fix-up expenses, if any, from

the sale proceeds); or (ii) the recipient may be permitted to retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property."

Subpart E—Research Funds

§ 921.40 Application procedures.

(a) To stimulate high quality research within designated estuarine sanctuaries, NOAA may fund research on a competitive basis to sanctuaries having an approved final management plan. This amount must be matched by the state, consistent with § 921.51(e)(iii) ("allowable costs"). Such research funds are provided in addition to any funds available to the state under the operation and management or acquisition and development awards. Individual states may apply for more than one research project per sanctuary.

(b) Research funds are intended to support significant research projects that will lead to enhanced scientific understanding of the sanctuary environment, improved coastal decisionmaking, improved sanctuary management, or enhanced public appreciation and understanding of the sanctuary ecosystem. Emphasis will be placed on projects that are also of benefit to other sanctuaries in the system. Proposals for research under the following categories will be considered:

(1) Baseline Data and to Establish a Monitoring Program (e.g., studies related to gathering and interpreting baseline information on the estuary; funds are available to establish a monitoring system. The long-term support for a monitoring system must be carried out as part of overall sanctuary implementation);

(2) Estuarine Ecology (e.g., studies of individual species' relationships with their estuarine environment, studies of biological community relationships, studies on factors and processes that govern the biological productivity of the estuary);

(3) Estuarine Processes (e.g., studies on dynamic physical processes that influence and give the estuary its particular physical characteristics, including studies related to climate, patterns of watershed drainage and freshwater drainage and freshwater inflow patterns of water circulation within the estuary, and studies on oceanic or terrestrial factors that influence the condition of estuarine waters and bottoms);

(4) Applied Research (e.g., studies designed to answer specific management questions); and

(5) Socioeconomic Research (e.g., studies on patterns of land use, sanctuary visitation, archaeological research).

(c) Research opportunities will be identified in final management plans for national estuarine sanctuaries. Research funds will be used to fill obvious voids in available data, as well as to support creative or innovative projects.

(d) Proposals for research in national estuarine sanctuaries will be evaluated in accordance with criteria listed below:

- (1) Scientific merits;
- (2) Relevance or importance to sanctuary management or coastal decisionmaking;
- (3) Research quality (i.e., soundness of approach, environmental consequences; experience related to methodologies); and
- (4) Importance to the National Estuarine Sanctuary Program.

Subpart F—General Financial Assistance Provisions

§ 921.50 Application information.

(a) The maximum total federal funding per sanctuary is \$3,000,000 for the preacquisition, acquisition and development, and operation and management awards. The research funding under § 921.40 is excluded from this total.

(b) Only a state Governor, or his/her designated state agency, may apply for estuarine sanctuary financial assistance awards. If a state is participating in the national Coastal Zone Management Program, the recipient of an award under Section 315 of the Act shall consult with the state coastal management agency regarding the application.

(c) No acquisition and development award may be made by NOAA without the approval of the Governor of the state in which the land to be acquired is located.

(d) All applications are to be submitted to: Management and Budget Group, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven St., N.W. Washington, D.C. 20235.

(e) An original and two copies of the complete application must be submitted at least 60 working days prior to the proposed beginning of the project. The Application for Federal Assistance Standard Form 424—(Non-construction Program) constitutes the formal

application for preacquisition and operation and management awards. The Application for Federal Assistance Standard Form 424—(Construction Programs) constitutes the formal application for land acquisition and development awards.

The application must be accompanied by the information required in Subpart B (preacquisition), Subpart C and § 921.31 (acquisition and development), and § 921.32 (operation and management), as applicable. All applications must contain backup data for budget estimates (federal and non-federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Appraisals and title information;

(3) Governor's letter approving the sanctuary proposal; and

(4) Written approval from NOAA of the draft or final management plan.

The Standard Form 424 has been approved by the Office of Management and Budget (approval number 0648-0121) for use through September 30, 1983.

§ 921.51 Allowable costs.

(a) Allowable costs will be determined in accordance with OMB Circulars A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments", and A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, local, and Federally Recognized Indian Tribal Governments"; the financial assistance agreement; these regulations; and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period, except as provided under preagreement costs, paragraph (d) of this section.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) Costs incurred prior to the effective date of the award (preagreement costs) are allowable only when specifically approved in the financial assistance agreement. For non-

construction awards, costs incurred more than three months before the award beginning date will not be approved. For construction and land acquisition awards, NOAA will evaluate preagreement costs on a case-by-case basis.

(e) General guidelines for the non-Federal share are contained in OMB Circular A-102, Attachment F. The following may be used by the state in satisfying the matching requirement:

(1) *Preacquisition Awards*—Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) *Acquisition and Development Awards*—Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the sanctuary boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state (pursuant to OMB Circular A-102, Attachment F) may also be used as match. Appraisals must be performed according to Federal appraisal standards as detailed in NOAA regulations and the "Uniform Appraisal Standards for Federal Land Acquisitions". Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match. Land, including submerged lands, already in the state's possession, in a fully-protected status consistent with the purposes of the National Estuarine Sanctuary Program, may be used as match only if it was acquired within a one-year period prior to the award of preacquisition or acquisition funds and with the intent to establish a national estuarine sanctuary. For state lands not in a fully-protected status (e.g., a state park containing an easement for subsurface mineral rights), the value of the development right or foregone value may be used as match if acquired by or donated to the state for inclusion within the sanctuary.

A state may initially use a match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the estuarine sanctuary.

(3) *Operations and Management Awards; Research Funds*—Cash and in-kind contributions (directly benefiting and specifically identifiable to this phase of the project), except land, are allowable.

§ 921.52 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revision of the approved project budget, or extension of the performance period must be submitted to NOAA and approved in writing.

Appendix 1—Biogeographic Classification Scheme

Acadian

1. Northern Gulf of Maine (Eastport to the Sheepscot River)
2. Southern Gulf of Maine (Sheepscot River to Cape Cod)

Virginian

3. Southern New England (Cape Cod to Sandy Hook)
4. Middle Atlantic (Sandy Hook to Cape Hatteras)
5. Chesapeake Bay

Carolinian

6. Northern Carolinas (Cape Hatteras to Santee River)
7. South Atlantic (Santee River to St. John's River)
8. East Florida (St. John's River to Cape Canaveral)

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south)
10. West Florida (Ft. Jefferson to Cedar Key)

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay)
12. Mississippi Delta (Mobile Bay to Galveston)
13. Western Gulf (Galveston to Mexican border)

Californian

14. Southern California (Mexican border to Point Conception)
15. Central California (Point Conception to Cape Mendocino)
16. San Francisco Bay

Columbian

17. Middle Pacific (Cape Mendocino to the Columbia River)
18. Washington Coast (Columbia River to Vancouver Island)
19. Puget Sound

Great Lakes

20. Western Lakes (Superior, Michigan, Huron)

21. Eastern Lakes (Ontario, Erie)

Fjord

22. Southern Alaska (Prince of Wales Island to Cook Inlet)

23. Aleutian Islands (Cook Inlet to Bristol Bay)

Sub-Arctic

24. Northern Alaska (Bristol Bay to Demarcation Point)

Insular

25. Hawaiian Islands

26. Western Pacific Islands

27. Eastern Pacific Islands

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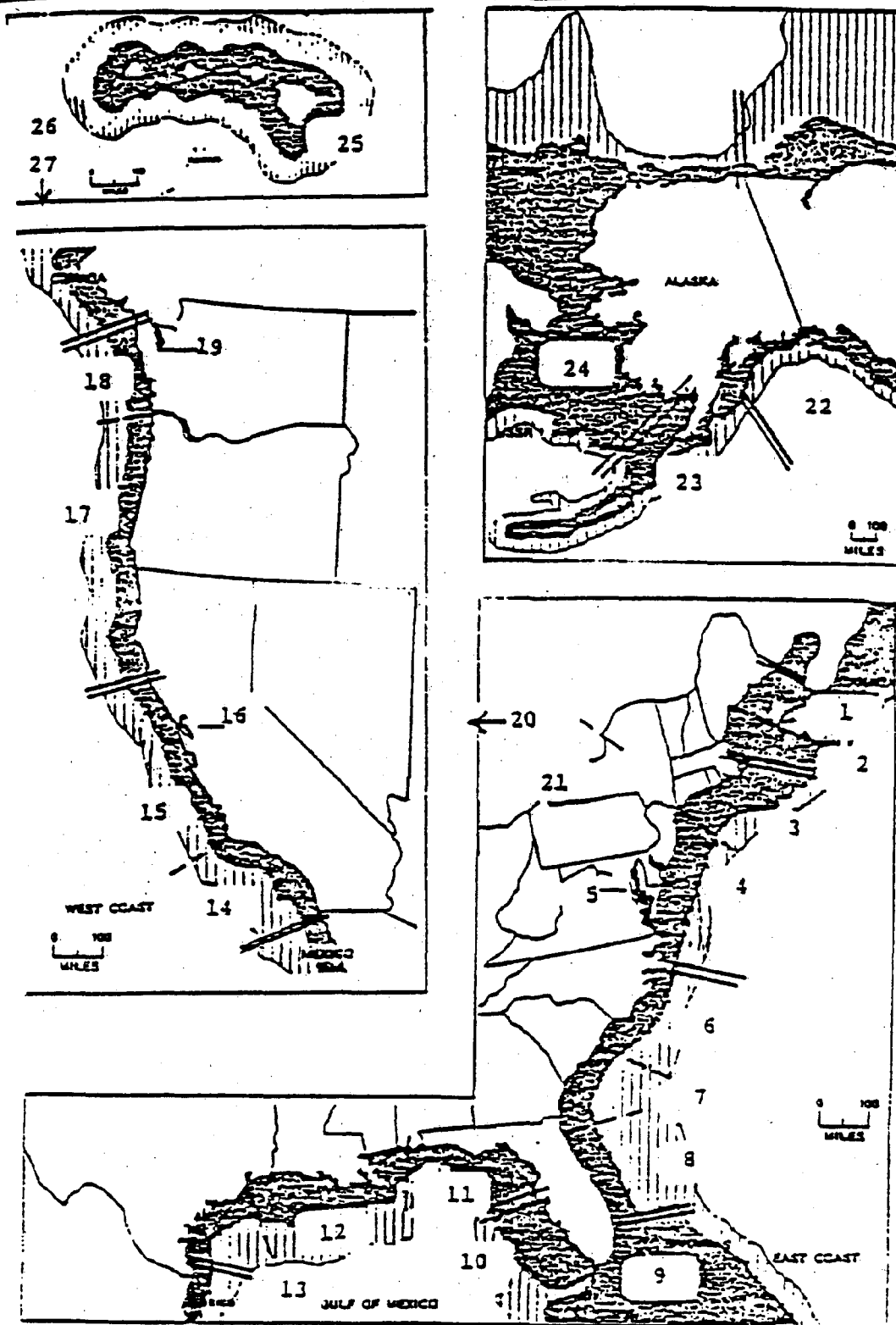


Figure 1. Biophysical Regions of the United States.

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Appendix 2—Typology of National Estuarine Areas

Class I—Ecosystem Types

Group I—Shorelands

As. Maritime Forest-Woodland—This type of ecosystem consists of single-stemmed species that have developed under the influence of salt spray. It can be found on coastal uplands or recent features, such as barrier islands and beaches, and may be divided into the following biomes:

1. Northern Coniferous Forest Biome: This is an area of predominantly evergreens such as the sitka spruce (*Picea*), grand fir (*Abies*), and white spruce (*Thuja*), with poor development of the shrub and herb layers, but high annual productivity and pronounced seasonal periodicity.

2. Moist Temperate (Mesothermal) Coniferous Forest Biome: Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has a relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. Temperate Deciduous Forest Biome: This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibit a distinct seasonal pattern, well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distinct subdivision of this biome is the *pine etaphic forest* of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by *etaphic climax pines*.

4. Broad-leaved Evergreen Subtropical Forest Biome: The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarind, strangler fig, gumbo limbo, and palms.

B. Coast Shrublands—This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems a few centimeters to several meters above the ground developing under the influence of salt spray and occasional sand burial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. Northern Areas: Characterized by *Hudsonia*, various ericaceous species, and thickets of *Myrica*, *Prunus*, and *Rosa*.

2. Southeast Areas: Floral dominants include *Myrica*, *Baccharis*, and *Ilex*.

3. Western Areas: *Adiantum*, *Arctostaphylos*, and *Eucalyptus* are the dominant floral species.

C. Coastal Grasslands—This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence

of a number of aeral stages of community development. Dominant vegetation includes mid-grasses (2 to 4 feet tall), such as *Ammophila*, *Agropyron* and *Calcimovilla*, tall grasses (5 to 8 feet tall), such as *Spartina*, and trees such as the willow (*Salix* sp.), cherry (*Prunus* sp.), and cottonwood (*Populus deltoides*). This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: *Elymus*;
2. Northeast/West: *Ammophila*;
3. Southeast/Gulf: *Umiola*; and
4. Mid-Atlantic/Gulf: *Spartina patens*.

D. Coastal Tundra—This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low temperatures, a short growing season, and some permafrost, producing a low, treeless mat community made of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as *Empetrum nigrum* and *Betula nana*, the lichens *Cetraria* and *Cladonia*, and herbaceous plants such as *Potentilla tridentata* and *Rubus chamaemorus*. Common species on the coastal beach ridges of the high arctic desert include *Dryas integrifolia* and *Saxifraga oppositifolia*. This area can be divided into two main subdivisions:

1. Low Tundra: characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and
2. High Tundra: a bare area except for a scanty growth of lichens and grasses, with underlying ice wedges forming raised polygonal areas.

E. Coastal Cliffs—This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and "higher" plant representatives.

Group II—Transition Areas

A. Coastal Marshes—These are wetland areas dominated by grasses (*Poaceae*), sedges (*Cyperaceae*), rushes (*Juncaceae*), cattails (*Typhaceae*), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: a) tidal, which is periodically flooded by either salt or brackish water; b) non-tidal (freshwater); or c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates and serves important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. Coastal Mangroves—This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by variety of salt-tolerant trees, such as the red mangrove (*Rhizophora mangle*), black mangrove (*Avicennia nitida*), and the white mangrove (*Laguncularia racemosa*). It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida

to extreme south Texas to the islands of the Western Pacific.

C. Intertidal Beaches—This ecosystem has a distinct biota of microscopic animals, bacteria, and unicellular algae along with macroscopic crustaceans, mollusks, and worms with a detritus-based nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (*Emerita*), amphipods (*Gammaridae*), ghost crabs (*Ocypode*), and bivalve molluscs such as the coquina (*Donax*) and surf clams (*Spisula* and *Macoma*).

D. Intertidal Mud and Sand Flats—These areas are composed of unconsolidated, high organic content sediments that function as a short term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflagellates, filamentous blue-green and green algae, and chemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell *Donax*, the scallop *Pecten*, tellin shells *Tellina*, the heart urchin *Echinocardium*, the lug worm *Arenicola*, sand dollar *Dendraster*, and the sea pansy *Renilla*. In mud, faunal dominants adapted to low oxygen levels include the terebellid *Amphitrite*, the boring clam *Playdium*, the deep sea scallop *Pluccpecten*, the quahog *Mercentaria*, the echiurid worm *Urechis*, the mud snail *Nassarius*, and the sea cucumber *Thyone*.

E. Intertidal Algal Beds—These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. Northern Latitude Rocky Shores: It is in this region that the community structure is best developed. The dominant algal species include *Chondrus* at the low tide level, *Fucus* and *Asciophyllum* at the mid-tidal level, and *Laminaria* and other kelp-like algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. Southern Latitudes: The communities in this region are reduced in comparison to those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentous green, blue-green, and red algae, and small thalloid brown algae.

3. Tropical and Subtropical Latitudes: The intertidal in this region is very reduced and contains numerous calcareous algae such as *Porolithon* and *Lithothamnion*, as well as green algae with calcareous particles such as *Halimera*, and numerous other green, red, and brown algae.

Group III—Submerged Bottoms

A. Subtidal Hardbottoms—This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic

origin). It is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. If light levels are sufficient, a covering of microscopic and attached macroscopic algae, such as kelp, may also be found.

B. Subtidal Softbottoms—Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a diverse population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. Subtidal Grassbeds—This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass *Zostera marina* predominates. In the South Atlantic and Gulf coast areas, *Thalassia* and *Diplanthera* predominate. The grasses in both areas support a number of epiphytic organisms.

Class II—Physical Characteristics

Group I—Geologic

A. Basin Type—Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. **Exposed coast**—Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area, making them chief stabilizers of the ocean shoreline.

2. **Sheltered coast**—Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined waters—abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects of pollution being more severe in this area than in exposed coastal areas.

3. **Bay**—Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced, the flushing action is augmented by river discharge. Bays vary in size and in type of shoreline.

4. **Embayment**—A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. **Tidal river**—The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges

to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. **Lagoon**—Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. **Perched Coastal Wetlands**—Unique to Pacific islands, this wetland type, found above sea level in volcanic crater remnants, forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constituents may include freshwater, brackish, and/or marine species. Example: Aunu'u Island, American Samoa.

8. **Anchialine systems**—These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs, have only a subsurface connection to the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthic algae such as *Rhizoclonium*, the mineral encrusting *Schizothrix*, and the vascular plant *Ruppia maritima*. Characteristic fauna, which exhibit a high degree of endemicity, include the mollusks *Theodoxus neglectus* and *T. cariosus*, the small red shrimp *Metabetaeus lohena* and *Halocaridina rubra*, and the fish *Eleotris sandwicensis* and *Kuhlia sandwicensis*. Although found through the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. Basin Structure—Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. **Coastal plains estuary**—Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular, forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries, and irregular estuary results. Many estuaries of the eastern United States are of this type.

2. **Fjord**—Estuaries that form in elongated, steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. The generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume, river discharge is small. But many fjords have restricted tidal ranges at their mouths, due to sills, or upreaching sections of the bottom which limit free movement of water, after making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches,

where maximum depths can range from 800 m to 1200 m, while still depths usually range from 40 m to 150 m.

3. **Bar-bounded estuary**—These result from the development of an offshore barrier, such as a beach strand, a line of barrier islands, reef formations, a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars or barrier islands, broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent sea level rises.

4. **Tectonic estuary**—These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding, or movement of the earth's bedrock, often with a large inflow of freshwater.

5. **Volcanic estuary**—These coastal bodies of open water, a result of volcanic processes are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic origin.

C. Inlet Type—Inlets in various forms are an integral part of the estuarine environment, as they regulate, to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea. There are four major types on inlets:

1. **Unrestricted**—An estuary with a wide, unrestricted inlet typically has slow currents, no significant turbulence, and receive the full effect of ocean waves and local disturbances which serve to modify the shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. **Restricted**—Restrictions of estuaries can exist in many forms: bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a tidal wave, or bore. Such currents exert profound effects on the nature of the substrate, turbidity, and biota of the estuary.

3. **Permanent**—Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea. Sedimentation and deposition are minimal.

4. **Temporary (Intermittent)**—Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea and sound waters, the frequency of storms, and the amount of littoral transport.

D. Bottom Composition—The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. **Sand**—Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shores and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a gradation toward finer particles in the head of the estuary. In the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. **Mud**—At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silt, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. **Rock**—Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. **Oyster shell**—Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

Group II—Hydrographic

A. **Circulation**—Circulation patterns are the result of the combined influences of freshwater flow, tidal action, wind and oceanic forces, and serve many functions: nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. **Stratified**—This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from "drowned" river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. **Non-stratified**—Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. **Lagoonal**—An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation, whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. **Tides**—This is the most important biological factor in an estuary, as it effects

water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of their cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as *datum*. The tidal cycle, although complex, falls into two main categories:

1. **Diurnal**—This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. **Semidiurnal**—This refers to a twice daily rise and fall in water that can be observed along the shoreline.

C. **Freshwater**—According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the land either from a surface and/or subsurface source.

1. **Surface water**—This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. **Subsurface water**—This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. **Vadose water**—This is water in the soil above the water table. Its volume with respect to the soil, is subject to considerable fluctuation.

b. **Groundwater**—This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief land, being high below hills and sloping into valleys.

Group III—Chemical

A. **Salinity**—This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand—ppt).

1. **Positive estuary**—This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. **Negative estuary**—This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary

mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3. Salinity zones (expressed in ppt):

a. **Hyperhaline**—greater than 40 ppt

b. **Euhaline**—40 ppt to 30 ppt

c. **Mixohaline**—30 ppt to 0.5 ppt

(1) **Mixoeuhaline**—greater than 30 ppt but less than the adjacent euhaline sea

(2) **Polyhaline**—30 ppt to 5 ppt

(3) **Mesohaline**—18 ppt to 5 ppt

(4) **Oligohaline**—5 ppt to 0.5 ppt

d. **Limnetic**—5 ppt to 0.5 ppt

B. **pH Regime**—This is indicative of the mineral richness of estuarine waters and fall into three main categories:

1. **Acid**—Waters with a pH of less than 5.5.

2. **Circumneutral**—A condition where the pH ranges from 5.5 to 7.4.

3. **Alkaline**—Waters with a pH greater than 7.4.

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